



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>













**ALEXANDER R. LAWTON**  
**FROM PORTRAIT BY GARI MELCHERS, 1912.**

THE

OF

THE

THE

THE



THE R. LAWTON  
AND G. M. C. B. C.

**REPORT**  
**OF THE**  
**THIRTY-EIGHTH ANNUAL SESSION**  
**OF THE**  
**GEORGIA BAR ASSOCIATION**  
**HELD AT**  
**TYBEE ISLAND, GEORGIA**  
**JUNE 2-4, 1921**

STANFORD LIBRARY

**EDITED BY**  
**HARRY S. STROZIER, SECRETARY**  
**MACON, GEORGIA**

MACON, GEORGIA  
THE J. W. BURKE COMPANY  
1922

L 8907  
FEB 7 1934

VIA RAIL CROCIATE

# CONTENTS

	PAGE
PORTRAIT OF ALEXANDER R. LAWTON.....	Frontispiece
THOSE WHO ATTENDED.....	5
JUDICIAL CONTROVERSIES, ON FEDERAL APPELLATE JURISDICTION	
Address of the President, Alexander R. Lawton.....	81
PUBLIC UTILITY REGULATION IN GEORGIA	
Address by C. Murphey Candler.....	139
THE HISTORY OF GEORGIA IN THE EIGHTEENTH CENTURY, AS RECORDED IN THE REPORTS OF THE GEORGIA BAR ASSOCIATION	
Paper by Orville A. Park.....	154
THE FRONTIERSMAN IN THE FIELD OF EARLY LEGISLATION	
Paper by A. L. Henson.....	279
TAXATION	
Paper by B. E. Pierce.....	305
THE TENDENCIES OF THE TIMES	
Paper by R. R. Arnold.....	319
THE BENCH AS A SCHOOL OF LAW	
Paper by A. B. Lovett.....	350
SUNDAY LEGISLATION	
Paper by R. M. Arnold.....	358
PURPOSES OF THE CONFERENCE OF BAR ASSOCIATION DELEGATES	
Paper by T. A. Hammond.....	380
MEMORIALS .....	392
PORTRAIT OF SPENCER R. ATKINSON.....	facing 394
TREASURER'S REPORT.....	408
REPORT OF COMMITTEE ON LEGISLATION.....	411
REPORT OF COMMITTEE ON JURISPRUDENCE, LAW REFORM AND PROCEDURE.....	412
REPORT OF COMMITTEE ON INTERSTATE LAW.....	415
REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.....	427
REPORT OF COMMITTEE ON LEGAL ETHICS AND GRIEVANCES.....	429
REPORT OF PERMANENT COMMISSION ON REVISION OF JUDICIAL SYSTEM AND PROCEDURE IN THE COURTS.....	432
REPORT OF COMMITTEE ON FEDERAL LEGISLATION.....	434
CONSTITUTION AND BY-LAWS.....	437
OFFICERS AND COMMITTEES, 1921-1922.....	450
OFFICERS AMERICAN BAR ASSOCIATION, 1921-1922.....	454
MEMBERS AMERICAN BAR ASSOCIATION.....	455
LOCAL BAR ASSOCIATIONS.....	457
ROLL OF MEMBERS.....	458
INDEX.....	470



## THOSE WHO ATTENDED

Adams, A. Pratt, Savannah	Cozart, John S., Columbus
Adams, Samuel B., Savannah	Cozart, A. W., Columbus
Adams, Worley, Royston	Crockett, C. C., Dublin
Akin, Miss Stella, Savannah	Crusselle, Edward, Atlanta
Alexander, Columbus E., Savannah	Cunningham, T. M., Jr., Savannah
Arnold, Reuben R., Atlanta	Curry, W. Inman, Augusta
Arnold, Robert M., Columbus	Daly, Augustin, Macon
Atkinson, David S., Savannah	Deaver, B. S., Macon
Bartlett, C. L., Macon	Denmark, Remer L., Savannah
Barwick, M. C., Louisville	Dillon, Miss Hortense M., Savannah
Baum, M., Quitman	Dillon, Walter S., Atlanta
Beck, Marcus W., Atlanta	Dillon, Mrs. Walter S., Atlanta
Bennet, John W., Waycross	Dorsey, Roy, Atlanta
Bennet, Sam S., Albany	Dorsey, Mrs. Roy, Atlanta
Bernstein, Morris H., Savannah	Douglas, W. W., Savannah
Blalock, J. D., Waycross	Dukes, Humphrey G., Savannah
Bleckley, Logan, Atlanta	Dukes, J. P., Pembroke
Bloch, Chas. J., Macon	Edwards, Charles Beach, Savannah
Bradley, A. S., Swainsboro	Edwards, Chas. G., Savannah
Brannen, J. A., Statesboro	Edwards Mrs. Chas. G., Savannah
Branham, Joel, Rome	Ellis, Roland, Macon
Bouhan, Jno. J., Savannah	Evans, Beverly D., Savannah
Bryan, W. L., Donalsonville	Evans, T. W., Dublin
Byrd, S. M., Lawrenceville	Gazan, Simon N., Savannah
Cambell, Miss Frances, Marietta	Falligant, Miss Louise, Savannah
Candler, C. Murphey, Atlanta	Falligant, Raiford, Savannah
Cann, J. Ferris, Savannah	Falligant, Mrs. Raiford, Savannah
Cargill, George, Savannah	Fearons, George H., New York
Clay, William L., Savannah	Felder, Thos. B., New York
Cohen, Girard M., Savannah	Fogarty, D. G., Augusta
Colding, Robt. L., Savannah	Foster, John J., Augusta
Cobb, H. P., Savannah	Foster, A. G., Madison
Colley, Carroll D., Washington	Fort, T. Hicks, Columbus
Collins, E. C., Reidsville	Franklin, A. L., Augusta
Colquitt, Walter T., Atlanta	Franklin, Mrs. A. L., Augusta
Connerat, W. S., Savannah	Franklin, O. J., Eastman
Cooper, J. C., Milledgeville	Fusillo, Paul, Savannah
Cooper, Jno. R., Macon	

Garrard, Frank U., Columbus	Lee, Lansing B., Augusta
Gibbs, W. B., Jesup	Lee, Mrs. Lansing B., Augusta
Gignilliat, Wm. R., Savannah	Lester, Richard M., Savannah
Gignilliat, Mrs. Wm. R., Savannah	Lester, Mrs. Richard M., Savannah
Gilbert, Price, Atlanta	Lewis, Miles W., Greensboro
Gilbert, Mrs. Price, Atlanta	Lindsey, J. W., Atlanta
Grogan, George C., Elberton	Lovejoy, Hatton, LaGrange
Guerry, John B., Montezuma	Maddox, G. E., Rome
Gunn, Will, Macon	Maddox, Mrs. G. E., Rome
Hammond, T. A., Atlanta	Maddox, Billie, Rome
Hammond, Mrs. T. A., Atlanta	Manton, Martin T., New York City
Hancock, O. C., Macon	Mason, J. W., Atlanta
Hardeman, R. N., Louisville	Meadow, W. K., Athens
Hardeman, R. N., Jr., Louisville	Meldrim, Peter W., Savannah
Harrison, Z. D., Atlanta	Merritt, Walter, Madison
Harrison, Mrs. Z. D., Atlanta	Miller, C. Don., Atlanta
Heery, B. B., Savannah	Moore, Roy W., Macon
Henson, A. L., Calhoun	Moore, Louis S., Thomasville
Herzog, A. L., Savannah	Moore, R. Lee, Statesboro
Hitch, Robert M., Savannah	Morris, Jno. E., Jr., Eastman
Hodges, W. C., Hinesville	Morrisy, Leo A., Savannah
Hofmayer, I. J., Albany	Mundy, Wm. W., Cedartown
Holden, Horace M., Athens	McAlpin, Henry, Savannah
Hunter, E. O., Savannah	McCreary, John, Macon
Hutchins, N. L., Lawrenceville	MacDonell, A. H., Savannah
Isaac, Clarence R., Brunswick	MacDonell, Mrs. A. H., Savannah
Johnson, H. Wiley, Savannah	McLaws, U. H., Savannah
Jordan, H. Mercer, Savannah	Neill, W. Cecil, Columbus
Jordan, R. C., Macon	New, S. P., Dublin
Kenan, Livingston, Savannah	Norman, N. J., Savannah
Kennedy, Jno. G., Savannah	Oliver, Edgar J., Savannah
Kimball, Rollin H., Winder	Oliver, F. M., Savannah
King, Alex. C., Atlanta	O'Neal, Marvin, Savannah
Kirkland, J. D., Metter	Orr, G. J., Jr., Savannah
Kunz, Marx, Perry	Overstreet, E. K., Jr., Sylvania
Langley, Lee J., Rome	Owens, Geo. W., Savannah
Langley, Mrs. Lee J., Rome	Owens, Mrs. Geo. W., Savannah
Lankford, G. W., Lyons	Park, James B., Greensboro
Latimer, W. Carroll, Atlanta	Park, Orville A., Macon
Latimer, Mrs. W. Carroll, Atlanta	Parker, D. M., Waycross
Lawrence, A. A., Savannah	Park, Noel P., Greensboro
Lawson, H. F., Hawkinsville	Parks, W. B., Dawson
Lawton, A. R., Savannah	Patterson, T. E., Atlanta
Lawton, Mrs. A. R., Savannah	Paulk, R., Ashburn
Lawton, A. R., Jr., Savannah	Phillips, John R., Louisville

Phillips, Miss Frances, Louisville  
Phillips, Miss Julia, Louisville  
Phillips, W. L., Louisville  
Pierce, Benj. E., Augusta  
Pope, John D., Albany  
Porter, J. H., Atlanta  
Porter, Mrs. J. H., Atlanta  
Powell, Arthur G., Atlanta  
Powell, Mrs. Arthur G., Atlanta  
Powell, Miss Grace, Atlanta  
Powell J. S., Sylvania  
Powers, V L., Macon  
Price, R. G., Louisville  
Purvis, Arthur L., Savannah  
Raoul, Miss Eleanor, Atlanta  
Rawls, H. G., Donaldsonville  
Reese, Millard, Brunswick  
Rich, P. D., Colquitt  
Richter, Geo. H., Savannah  
Roberts, Orrin, Monroe  
Rogers, Z. B., Elberton  
Rosser, Luther, Atlanta  
Rosser, Mrs. Luther, Atlanta  
Rosser, L. Z., Atlanta  
Rourke, John, Jr., Savannah  
Rowe, A. B., Savannah  
Russell, Chas. D., Savannah  
Russell, Richard B., Jr., Winder  
Sanderson, William R., Savannah  
Sanford, D. S., Milledgeville  
Saussy, Gordon, Savannah  
Shanks, Thos. H., Columbus  
Shanks, Mrs. Thos. H., Columbus  
Sharp, T. Ross, Lyons  
Shelton, Chas. B., Atlanta  
Shumate, Frank, Atlanta  
Sibley, Erwin, Milledgeville  
Slaton, Jno. M., Atlanta  
Smith, A. B., Savannah  
Smith, Mrs. A. B., Savannah  
Smith, Alex. W., Jr., Atlanta  
Smith, Jno. Y., Atlanta  
Smith, Marion, Atlanta  
Smith, Wm. E., Albany  
Spalding, Hughes, Atlanta  
Sparks, Aug. O. B., Macon  
Saussy, Fred T., Savannah  
Strozier, Harry S., Macon  
Stovall, W. B., Atlanta  
Sutton, Clement E., Washington  
Sutton, Mrs. Clement E., Wash-  
ington  
Swift, H. H., Columbus  
Theus, Charlton M., Savannah  
Thompson, A. H., La Grange  
Travis, John L., Savannah  
Turner, William D., Savannah  
Tuten, Frederick A., Savannah  
Watkins, Edgar, Atlanta  
Webb, E. L., Tifton  
Webster, J. Prince, Atlanta  
Webster, Mrs. J. Prince, Atlanta  
Welch, R. H., Columbia, S. C.  
Miller, A. L., Macon  
Wells, J. H., Jr., Savannah  
Westbrook, Cruger, Albany  
Wheeler, A. C., Gainesville  
Wilkinson, H. A., Dawson  
Gordon, Wm. W., Savannah  
Witman, M. J., Macon  
Norman, Erle, Washington  
Wright, Barry, Rome  
Wright, Howard P., Jackson-  
ville, Fla.  
Yeomans, M. J., Dawson



REPORT OF PROCEEDINGS  
OF THE THIRTY-EIGHTH ANNUAL SESSION OF  
THE GEORGIA BAR ASSOCIATION, HELD  
AT HOTEL TYBEE, TYBEE ISLAND,  
GEORGIA, JUNE 2, 3, 4, 1921.

---

MORNING SESSION, JUNE 2, 1921.

The thirty-eighth annual session of the Georgia Bar Association convened in the pavilion of the Hotel Tybee, Tybee Island, Georgia, at 11:30 o'clock, A. M., Eastern time. The meeting was called to order by the President, Mr. A. R. Lawton, of Savannah.

The President: The thirty-eighth annual session of the Georgia Bar Association will now come to order. The by-laws require that the Executive Committee shall arrange the program for each of the meetings. The first thing in order will be the report from the Executive Committee, of which Mr. W. Carroll Latimer, of Atlanta, is Chairman.

Mr. W. Carroll Latimer, of Atlanta: Mr. President, Ladies and Gentlemen: The Executive Committee is exceedingly anxious to have a complete roll or roster of those attending this Convention, and we will ask that each one of you be sure to register at the table inside the lobby of the hotel. Please sign a card there and procure your badge, so that we will know who is present. The ladies are requested to register too.

Mr. President, Your Executive Committee beg to report that they have elected fifty-nine new members of the Association. Their names and the names of those who have endorsed them for membership are as follows:

## REPORT OF PROCEEDINGS

APPLICANT	RESIDENCE	ENDORSED BY
R. M. Arnold	Columbus	H. H. Swift
J. M. Bleckley	Cochran	Harry S. Strozier
F. G. Boatright	Cordele	Hal Lawson
Thos. F. Buchanan	Atlanta	W. Carroll Latimer
Lamar Camp	Rome	Wright Willingham
Geo. H. Carswell	Irwinton	Harry S. Strozier
C. N. Carey	Rome	Wright Willingham
W. T. Davidson	Eatonton	Z. D. Harrison
Homer C. Denton	Atlanta	W. Carroll Latimer
Linton A. Dean	Rome	Wright Willingham
John Camp Davis	Rome	Wright Willingham
Hortense M. Dillon	Savannah	Miss Stella Akin
Roy Dorsey	Atlanta	W. Carroll Latimer
R. Hill Freeman	Atlanta	Rollin H. Kimball
Wm. M. Farr	Savannah	A. R. Lawton
C. N. Featherston	Rome	Wright Willingham
Quillian L. Garrett	Waycross	Benj. G. Parks
J. D. Gardner	Camilla	I. J. Hofmayer
John M. Guerard	Savannah	Geo. W. Owens
Miss Alene Hardin	Macon	C. L. Bartlett
P. O. Holliday	Macon	Harry S. Strozier
Clarence R. Isaac	Brunswick	Jos. W. Bennet
J. B. Jones	Rome	Wright Willingham
J. F. Kelly	Rome	Wright Willingham
Chas. C. King	Covington	N. L. Hutchins
J. W. LeCraw	Atlanta	E. W. Moise
T. J. Lewis	Atlanta	W. Carroll Latimer
U. H. McLaws	Savannah	A. R. Lawton
James Walter Mason	Atlanta	W. Carroll Latimer
James Maddox	Rome	Wright Willingham
H. W. Nalley	Alamo	Hal Lawson
W. Cecil Neill	Columbus	H. H. Swift
George O'Donnell	Savannah	A. R. Lawton
G. Ogden Person	Forsyth	Harry S. Strozier
E. Clem Powers	Macon	Harry S. Strozier
V. L. Powers	Macon	Harry S. Strozier
Miss Eleanor Raoul	Atlanta	W. D. Thomson
T. P. Ravenel	Savannah	A. R. Lawton
Rufus G. Richards	Savannah	A. R. Lawton
R. R. Richards	Savannah	A. R. Lawton
W. S. Rowell	Rome	Wright Willingham
P. H. Rowe	Augusta	Jas. M. Hull, Jr.
Horace Russell	Atlanta	Edgar Watkins

Wm. R. Sanderson.....	Savannah.....	Alvin B. Rowe
F. E. Shumate.....	Atlanta.....	W. Carroll Latimer
Walter A. Sims.....	Atlanta.....	W. Carroll Latimer
Aug. O. B. Sparks.....	Macon.....	Harry S. Strozier
John Y. Smith.....	Atlanta.....	W. Carroll Latimer
W. B. Stovall.....	Atlanta.....	Chas. B. Shelton
Charlton M. Theus.....	Savannah.....	A. R. Lawton
Jesse M. Wood.....	Atlanta.....	Geo. M. Napier
Graham Wright.....	Rome.....	Wright Willingham
D. M. Byrd.....	Lawrenceville.....	N. L. Hutchins
Noel P. Park.....	Greensboro.....	W. Carroll Latimer
Miles W. Lewis.....	Greensboro.....	W. Carroll Latimer
J. D. Carlisle.....	Macon.....	Orville A. Park
Augustin Daly.....	Macon.....	Orville A. Park
P. D. Rich.....	Colquitt.....	I. J. Hofmayer
H. T. Rawls.....	Nashville.....	I. J. Hofmayer

Mr. Latimer, continuing: Mr. President, since the meeting of the Executive Committee, we have been presented with the application of Mr. T. Hicks Fort, of Columbus, endorsed by Mr. H. H. Swift, of Columbus, and that will have to be voted on by the Association.

Judge A. W. Cozart, of Columbus: I move that the rules be suspended and that the Secretary be instructed to cast the ballot of the Association for Mr. Fort for membership in the Association.

This motion was seconded and carried, and after the Secretary had cast the ballot Mr. Fort was declared duly elected a member of the Association.

Mr. Latimer, continuing: I am very sorry that the Executive Committee is unable at this time to announce the full program for the entire session. We have only about an hour's session before us this morning. We have certain business reports necessary to be passed upon, and it will not be possible in the opinion of the Executive Committee to have the annual address of the President given at this morning's session. The Executive Committee has therefore decided to defer the President's address until this afternoon. It will be delivered at 3:45 o'clock, P. M. The reports of several committees will be heard this morning, and gotten

out of the way, so that the rest of the session will not be filled with reports of committees.

We want to hear from Mr. Hammond on the "Purposes of the Conference of American Bar Association Delegates". Judge Powell's report we want to get behind us, and the Report of the Committee on Memorials, and the Treasurer's Report.

This afternoon we will meet at this place at 3:45 o'clock, Eastern time. The President's address will be the first paper. Then we will have the report of Mr. Lansing Lee's Committee on Federal Legislation. Senator Harris has requested the Georgia Bar Association to give him the benefit of its advice as to the wisdom of another United States District Court; that is, whether a new court in a new district is needed, or whether a new judge should be appointed and allow the two districts to remain as they are. That will come up this afternoon in Mr. Lee's report and will be discussed. We will also have a paper by Mr. Arnold of Columbus, and the report of Mr. Fowler's Committee on Legislation; and if we get to it this morning, we will have a short paper by Mr. A. L. Henson, of Calhoun.

The President: In the absence of objection the chair will presume that the postponement of the President's Address until this afternoon meets with the approval of the Association. There appears to be no objection.

The next item on the program will be a paper by Mr. T. A. Hammond, of Atlanta, which will be in the nature of a report with reference to the Conference of Delegates to the American Bar Association.

(For the paper by Mr. Hammond, see page 380.)

The President: The Chair announces in this connection that the delegates to the Conference of Representatives from State and Local Bar Associations have been appointed for the year. The delegates are:

Mr. T. A. Hammond, of Atlanta, Chairman.

Judge J. H. Merrill, of Thomasville.

Mr. O. A. Park, of Macon.

They will be the delegates for this year.

Mr. W. Carroll Latimer, of Atlanta: The State Bar Associations of Arkansas, Louisiana, and Michigan are in session today, to-morrow, and Saturday. Last year we had a message of greeting from the Illinois State Bar Association during our session. I move that the Secretary of this Association be instructed to send telegrams of greeting to these other State Bar Associations which are now in session.

This motion was seconded and carried.

The President: The chair would be pleased to hear more of the members voting on these resolutions.

Mr. Millard Reese, of Brunswick: I am sure that it is a matter of regret to every member of this Association who has been accustomed to attending these meetings that Judge J. H. Merrill, of Thomasville, is not present with us to-day. He is a former President of this body and is providentially detained from being present at this session. I move that the Secretary send to Judge Merrill at Asheville, where he now is, a telegram, expressing our regret at his absence.

The President: The chair is sure that that will meet with a hearty response. The Association has not a better member or a more regular attendant than Judge Merrill.

The motion was carried unanimously.

The President: The chair thanks the membership for responding so readily to the call of the chair to vote.

We will now hear from Judge Arthur G. Powell with reference to the work of the Special Committee to bring to the attention of the Appellate Courts certain changes in their rules, which the Association desired to suggest to them. (Applause.)

Judge A. G. Powell, of Atlanta: Mr. President and Members of the Georgia Bar Association: The Special Committee appointed under a resolution of the Association for the purpose of bringing to the attention of the Supreme

Court and the Court of Appeals certain changes in the rules of Court which the Association desired to urge upon them begs leave to report:

Feeling that action by the Court of Appeals should be preceded by action by the Supreme Court, the Committee made request of the Chief Justice for an engagement to present the matter. During the summer months the exigencies of the Court were such as that it was deemed inexpedient to bring the matter up for discussion at that time; so an engagement was arranged soon after the opening of the October Term.

The members of the Committee, at the time arranged for, appeared at the consultation room of the Supreme Court and were received by the Justices with the utmost courtesy, and were given opportunity to express the views of the Association at length. The Justices announced that they would take the matter under advisement and that they might call upon the members of the Committee for a further interview, if the Court found it needful.

The Committee urged upon the Court the advisability of the promulgation of the new rules early in the year 1921, in order that they might become operative with the beginning of the March Term.

The Committee regrets to report that so far as it is advised no further action has been taken by the Court.

Notwithstanding the need for the reform in the court rules seems to be imperative, the Committee knows of nothing further it can do in the matter; hence reports it back to the Association for such suggestions, if any, as this body may see fit to make.

Judge A. W. Cozart, of Columbus: I move that the report be received.

This motion was seconded and carried.

The President: Next is the Report of the Treasurer, Mr. Z. D. Harrison, of Atlanta. (Applause.)

(For the report of the Treasurer, see page 408.)

Judge A. W. Cozart, of Columbus: As a member

of the Executive Committee, I wish to suggest that members who are in arrears should pay their dues. If they will do that, they will oblige us. If they do not do that, we ought to adopt some means to oblige them. (Laughter.) There are three things a member of this Association ought to pay with unvarying regularity. He should pay attention, pay his respects, and pay his dues. Our report of proceedings, as you will notice, is only half the size that it used to be, simply because we have not money enough to print it. A remark to the wise is sufficient. You are all wise. If you are not wise, it is not necessary to say any more.

The President: The chair may remark in connection with the Treasurer's report that he presumes there will be no objection to Judge Cozart's suggestion that those in arrears should pay their dues. The chair will assume that the Association endorses that request. The chair is also struck with the fact that in these "dry" days, we can always find at least one cool and refreshing oasis; and here we find it in that which in every other place I know is as dry as dry can be, and that is the Treasurer's Report. We always get pleasure from the report of our Treasurer, Col. Harrison, whom we all so delight to honor. (Applause.)

Under the by-laws it is the duty of the chair on the opening day to appoint a Committee on Nominations. The chair announces this Committee as follows:

Mr. O. A. Park, of Macon, Chairman.

Judge A. L. Miller, of Macon.

Mr. T. A. Hammond, of Atlanta.

Mr. T. M. Cunningham, Jr., of Savannah.

Mr. S. S. Bennett, of Albany.

All of these are ex-presidents of the Association. They will be prepared to make nominations of officers tomorrow.

The next business in order is the Report of the Committee on Memorials, Judge A. W. Cozart, of Columbus, Chairman.

Judge A. W. Cozart, of Columbus: The Committee on Memorials begs leave to report that since the last annual meeting of this Association six members thereof have departed this life to-wit: J. L. Sweat, of Waycross; Spencer Roane Atkinson, of Atlanta; E. S. Elliott, of Savannah; L. B. Norton, of Lithonia; and Dupont Guerri and Richard Curd, of Macon.

Memorials of these deceased members have been prepared and filed with the Secretary, as required by the by-laws.

(For the memorials, see page 392.)

Mr. H. F. Lawson, of Hawkinsville: I move that all resolutions presented to this Association be referred to the Executive Committee, and that the Executive Committee be authorized to appoint a sub-Committee to report back to them all such resolutions as should be reported back to the Association by the Executive Committee.

The motion was seconded and carried.

The President: The next item on the program is an address upon the subject: "The Frontiersman in the Field of Early Legislation," by Mr. A. L. Henson, of Calhoun. I should like to say that the Association will extend a cordial welcome to Mr. Henson, not only because he is a member of the Bar Association, but also because he is State Commander of the American Legion and all that that indicates. (Applause.)

Mr. A. L. Henson, Calhoun: In that splendid work of Judge Powell's on land litigation you will find that he states in the preface that the greatest condemnation he can invoke upon his enemy is that he write a book. Now, should I want to get even with any of my enemies, I would get this Executive Committee to ask them to prepare papers. I feel as Judge Powell did, when he wrote the preface to his book.

The subject of this paper is, as has been indicated, "The Frontiersman in the Field of Early Legislation."

(For Mr. Henson's paper, see page 297.)

The President: Next in order is the Report of the Committee on Legislation, Mr. B. J. Fowler, of Macon, Chairman. The Secretary has his report.

The Secretary: Mr. Fowler could not be here, but gave me his report, which I will read. It is short.

(For the Report of the Committee on Legislation, see page 411.)

The President: If there is no objection, that report will take the usual course and be filed. That closes the program for this morning.

I would like to make an announcement to the Association. As you know, the orator of the occasion is the Honorable William E. Borah, United States Senator from Idaho. When I had the honor of inviting Senator Borah, he expressed the greatest pleasure at the prospect of coming. Naturally I understood of course that, if the demands of the public service interfered, they must be supreme. The Naval Appropriation Bill unexpectedly went over last week until yesterday in the Senate. Senator Borah sent me a telegram in which he stated this would prevent his attending. I did not accept his telegram as final, and I took the liberty of wiring him, after consulting with members of the Executive Committee, that his place would not be filled on the program, that we would make no effort to get a substitute, but that the program would be held open for him, and we hoped he would get here on one of the days of our meeting, if not earlier than Saturday. Yesterday the Naval Appropriation Bill was finally disposed of in the Senate, and there was nothing ahead of it but to go back to the House and then the usual conference report. I took the liberty of sending a telegram to Senator Borah in the name of the Association, expressing our earnest desire to see him and know him and meet him and expressing our hope that he would come down. I suggested that he could leave Washington at 3:00 o'clock Friday afternoon and get here Saturday morning, deliver his address at noon and return to Washington without having been absent except on Fri-

day afternoon, as I take it for granted that Saturday will be a *dies non* in the Senate. I have asked others to help in persuading him to come. I wish to make that announcement, and to say that the Executive Committee still has hopes that Senator Borah will be here on Saturday. I should like also to have your endorsement of what I have said in the name of the Association, and that is that we desire to have him.

Judge C. L. Bartlett, of Macon: I make the motion that the Association heartily endorses the act of the President in insisting that Senator Borah come, and further that we express the hope that the President and the Executive Committee will do anything in their power to get him here. If he does come, I know we will be amply repaid for any trouble we have been to.

This motion was seconded and carried.

The President: The Association will re-convene at 3:45 o'clock this afternoon.

The Committee will discuss the question whether it is advisable to meet here on the pavilion or in-doors. I take it for granted we will all agree that, if you are unaccustomed to speaking against the wind, this is rather a bad place to hold our meeting. It is, however possible that it may be better than in-doors, but please bear in mind that it will be in one of the two places at 3:45 o'clock.

The morning session was then adjourned.

---

#### AFTERNOON SESSION, JUNE 2, 1921.

The afternoon session was called to order in the dining room of the Hotel Tybee at 3:45 o'clock by the President, Mr. A. R. Lawton, of Savannah.

The President: The Association will please come to order. The first thing will be any further report which the Executive Committee has to make.

Mr. W. Carroll Latimer, of Atlanta: There are several announcements that we wish to make. Tomorrow

morning at 9:00 o'clock Mr. Stewart, of the Central of Georgia Railway, will be in front of the desk in the hotel with diagrams to make reservations for those who desire to go out either tomorrow night or Saturday night. You can get your reservations right here in the hotel if you will see Mr. Stewart at 9:00 o'clock in the morning at the desk.

This evening at 8:00 or 8:30 o'clock we will have an orchestra and informal dance for the Association on the pavilion, where we were this morning. All are invited, and we hope you will all be there, both the members and their guests.

Tomorrow evening at 8:30 o'clock the choir of St. John's Church, Savannah, will give this Association a concert. This choir consists of fifty-five male voices, and they have arranged a special program for the Association. They are coming down here as the guests of the Association to help entertain you tomorrow evening. After that concert is over there will be a dance on the pavilion, followed by some refreshments.

The following applications for membership in the Association have been properly endorsed and turned over to the Secretary:

APPLICANT	RESIDENCE	ENDORSED BY
Wm. D. Turner.....	Savannah .....	Edgar J. Oliver
W. B. Gibbs.....	Jesup .....	Harry S. Strozier
Erle Norman.....	Washington.....	Carroll D. Colley
Mark Kunz.....	Perry .....	Harry S. Strozier
D. M. Parker.....	Waycross .....	Harry S. Strozier
Walter Merritt.....	Madison .....	A. G. Foster
Wm. E. Smith.....	Albany .....	I. J. Hofmayer
J. C. Cooper.....	Milledgeville .....	Roy Dorsey.

I move you, Mr. President, that these applicants be elected members of the Association.

This motion was seconded, put to vote, and carried.

Mr. Latimer, continuing: Tomorrow morning after the adjournment of the morning session a photographer will be present, who wants all the members and guests to as-

semble in front of the hotel for a picture. He will be there immediately after the adjournment of the meeting tomorrow morning.

The program for tomorrow cannot be definitely announced at present, but we do know we will have two sessions, a morning and an afternoon session. We will have some very interesting papers. We will have a paper by Mr. R. R. Arnold, of Atlanta; another by Mr. C. Murphey Candler, of the Railroad Commission; another by Mr. Orville A. Park, of Macon; and another by Judge A. B. Lovett, of Savannah. These four papers we know will be on tomorrow's program at either the morning or afternoon session.

We will go as far as we can with this afternoon's program, and those not reached will be carried over until tomorrow. The first thing on this afternoon's program will be the President's Address by Col. A. R. Lawton. That will be followed by a paper by Mr. Benj. E. Pierce, of Augusta, and another paper by Mr. Robert M. Arnold, of Columbus.

The first in order will be the Annual Address by the President, Col. A. R. Lawton. (Applause.)

(For the President's Address, see page 81.)

Judge A. W. Cozart, of Columbus: I move that we go on with one of the papers we had scheduled for this afternoon. We will have tomorrow Mr. R. R. Arnold and Mr. Candler and others, and we cannot possibly get through unless we go ahead with the program this afternoon. So I move that we dispense with one of the papers that we had on the program for this evening and have only one, and, if the gentleman's paper is long, he can abbreviate it somewhat, and we will get through pretty soon. I always make it a rule myself, if I have a speech to deliver, to have the janitor fix the water and the table.

Now all those who do not want to stay and hear will be the losers and we will be the gainers. I am speaking for the Executive Committee. We are compelled to go on.

Judge A. G. Powell, Atlanta: I recognize that the

Executive Committee has broad discretionary power, but I move as a substitute for the motion of my esteemed friend, Judge Cozart, that we do now adjourn, for this reason, that the President of this Association, as well as myself, has brought all of his wives to attend this session, and I think we are all entitled to a little recreation.

The President: As a matter of personal privilege, the chair object to the gentlemen's reference to the number of wives.

Judge Powell: Well, Mr. President, I've brought with me every wife I have got. (Laughter.)

Judge Cozart: This is a serious matter, but if they don't want to hear the addresses——

Judge Powell: We men, as the President must take judicial notice, are more under the sway of our wives than of this Association. We must obey their commands when they say they are going to take us away to the bathing place.

The young men who have prepared these papers no doubt have worked months on them; but I am sure, if we can get the Executive Committee to have some of these standing Committees to summarize their reports, and have the others ask "leave to print," we can get through with the work of the Association, and give sufficient time to the hearing of these papers.

Judge Cozart: Between the dish-washers in the hotel and the wind on the pavilion we are in the fix of the fellow, that swallowed the egg. "If I move, it will break. If I don't, it will hatch." (Laughter.) But we have another drawback, and that is the disinclination to stay in session. I suppose we will not have any Association at all, if we go on this way. The only way to complete our work here is to go on with our program and let those who don't want to hear, lose it.

The President: Judge Cozart moves that we hear one of the papers. He does not indicate which one. Judge Powell moves as a substitute that we do now adjourn. The substitute will be voted upon first.

The substitute was then put to vote and carried.

The afternoon session was then adjourned.

## MORNING SESSION, JUNE 3, 1921.

The morning session of the second day was called to order at 10:00 o'clock by President A. R. Lawton, of Savannah.

The President: The Association will please come to order.

In advance of the regular program this morning I wish for special reasons to present on behalf of the Executive Committee one of the resolutions which have been filed with that Committee, which they report with the recommendation that it be adopted. I do this because of the necessary early absence of the author of it, Mr. A. L. Henson, Commander of the American Legion for the State of Georgia, who delivered to us that very interesting paper yesterday morning. I am sure that this resolution will provoke no discussion, and will meet with unanimous approval. It is as follows:

*Whereas*, some years ago the State of Georgia determined to place in the Hall of Fame in the Capitol at Washington a suitable memorial to Dr. Crawford W. Long and to Honorable Alexander H. Stephens; and

*Whereas*, the General Assembly of Georgia, by resolution approved August 20th, 1920, authorized and directed the Governor to appoint a Commission of five to solicit and secure funds for the proposed erection of said memorials, and in pursuance thereof the Commission has been named; and

*Whereas*, the Georgia Medical Society have created a Committee of their organization to assist the Commission appointed by the Governor in securing funds for the memorial of the eminent physician, Dr. Crawford W. Long;

*Therefore be it Resolved*, That a Committee of five be appointed by the President from among the members of the Georgia Bar Association, who shall co-operate with the said Commission, and shall be specially charged with assisting that Commission in raising the funds necessary to

place in said Hall of Fame a fitting memorial to that great Georgia Lawyer, Alexander H. Stephens.

This resolution was unanimously adopted.\*

The President: I wish to make another slight variation from the regular program this morning. We are fortunate in having with us this morning a gentleman who I am sure is well known to all of you by reputation, the Honorable Judge Martin T. Manton, of the Second Judicial District of New York City. We would like to have him say a few words to this Association, if he will kindly come forward. Ladies and Gentlemen, Judge Manton. (Applause.)

Judge Martin T. Manton: I feel very much like the Italian who came before me one day applying for American citizenship. He was asked the questions as to his qualifications, one of which was, "Give the name of the President who was Vice-President of the United States"—and he said "a-Rosa." "Give the name of the present President of the United States" and he said "a-Wilse." It was in the war period during which we all know the great tasks and obligations imposed upon the President and how splendidly he was meeting them. I then said, "Now, my good man, if I make you a citizen of the United States of America, what is there to prevent you from succeeding Mr. Wilson, our President?" He washed his hands in imaginary rosewater and said, "Excusa me, Judge, I gotta helluva good-a job now." (Applause.) So I feel I was having a fine time visiting with the members of this Association, but I never even dreamed of being called upon for a speech.

I am glad to be here, and glad to have this respect shown me. It is a great honor to visit at this gathering of your Association, and a particular honor to be called upon to say something—even though unprepared to do so. I cannot

---

\*The following Committee was appointed in pursuance of this Resolution: A. L. Henson, Calhoun, Chairman; Carroll D. Colley, Washington; F. T. Saussy, Savannah; A. L. Franklin, Augusta; Thos. H. Shanks, Columbus.

help, however, as I look upon this gathering, but see the spirit of fellowship as displayed toward each other, telling the story that the members of the Georgia Bar represent the best of spirit that exists in any bar. Their friendliness is exemplified in every little act they do and in all they say.

Then too, when I think of the bar of any State or the bar of America, I think of the responsibilities and obligations which are the lawyer's responsibilities and obligations. I think of the immediate future, the period just before us, the period in which the leaders of mankind must think and act; think correctly and act with sound judgement, if America is to keep her place as a leader of the family of the nations of the world. The lawyer of every community is at the outset conceived to be a man of exceptional ability in his community, and the lawyer of every community is looked upon, not alone as the leader of the community, but the hope of the community, and it is our conduct and our appreciation of that standing and obligation that will make for the future leadership of the nation.

The problem of the future citizenship of America is seriously presented today. You are perhaps not so much troubled about it as we are in the great City of New York, and yet I can hardly conceive of any large city in the country that does not have its pro rata share of it. But what shall we do to make good citizens of the large number of immigrants who are coming to this country? What is taking place in this every-day adoption of America by foreigners presents, succinctly, the question whether this is after all the new world we have loved to think and talk of. They say that since the war the great slogan in Australia is: "Australia for Australians." We think so much here in America of—America for Americans. Ever since the signing of the armistice, we have heard so much about one hundred per cent Americanism, as if it was to exhort our people to greater nationalism to its fullest extent. During the war, your wives left their homes and went into community houses working in various ways for those splendid boys who went

marching to the front. Your boys left their schools early so that they might go out and sell War Savings Stamps. Your daughters accosted men, strangers on the street, to sell Liberty Bonds. All of this was exemplifying for each, the best there was in our nationalism or Americanism. Splendid boys went marching to the front, some of them never to return. This was their contribution toward Americanism. No man dared point a finger at another in those days accusing him of want of patriotism or Americanism. To do so was to make an accusation of the worst possible offense. And that was the spirit of America up until the signing of the armistice. That was patriotism in its true sense and its best accepted form.

Suddenly, as if over night, however, something seems to have taken the place of patriotism. I am out of politics, but the politicians say it was partisanship that took the place of patriotism. The result has been that America has lagged behind. And worse still, America's lagging has caused a stagnant period in the world's commercial affairs. The problem of the day is simply to teach the immigrant what is Americanism. And isn't Americanism simply a willingness on the part of free men to accept the finest form of government known to mankind-America's democracy? When you analyze the reason for the failure to keep up the splendid spirit exemplified during the war, you will find at the very foundation of the evil, all the error of our way is selfishness within the nation and, indeed, the selfishness within the human breast of all of us. Some have it in greater degree than others, but somehow and somewhere, it is clearly shown. If the nation acted in a large way and took its proper place among the nations of the world, we could not be accused in any part of the world of national selfishness. If our citizens would assume civic obligations as well as those which appear purely personal obligations, how much less would be the selfishness that is shown to our fellowmen. The tendency is altogether too clear and it is a fact that among the immigrants who are to be our fellow-citizens, they think very

little, if at all, of our civic obligations and their personal obligations to their fellowmen. In New York, you can pass up one of its broad highways leading north and south at the hour when the toilers leave the factories and make for their homes, and if you will look into the faces of the people that go to and fro, you will feel that you are in a foreign land. These people come to the land of opportunity, the land of promise. They become citizens of America hesitantly. They wish to be your fellow-citizens, in so many instances only with the object of profiting, in securing employment in avenues which are not open to them if they are not American citizens. Very few seek to become citizens with the noble object of assuming the obligations of our government and raising the community up high in the realms of nationalism and patriotism.

The lesson the lawyer must teach is that citizenship in America should not be a mere convenience of a livelihood and that alone. As you look into the faces of these peoples who come from countries of Europe, and you pass them, crowded and jostled by them in the street, you wonder how much they think of the slogan you have thought so much about, when they come into the courts seeking citizenship—"America for Americans." The one remedy for this, to make this still the new world of the future, and to continue as such, is to impress the full realization of the obligation of citizenship upon them. And that can be brought home to men of every land who come here in search of opportunity and promise, by the lawyers of the community and by the lawyers alone, because learned in the law carries with it a learning in civic obligations. We should go on and teach them to become our neighbors; that America may only prosper so long as America has civic pride; and that, so it may be lasting, requires that we continue, day in and day out, to teach, both by our speech and by our conduct.

If I talked here longer, I would miss my train, but, I wish I could talk to you further on this subject. It is the most engrossing of our period. If America is going to assume a

position of isolation, then America must train men to be good citizens in the obligations of citizenship more than ever. It is for the men interested in the welfare, not only of their own families, but in the welfare of their own locality and State, and especially the lawyers, to reckon with this problem and to deal intelligently and efficiently with it.

I am appreciative of this honor and this message I leave with you, Mr. President and Gentlemen, as the citizenship grows, so will America. My unlimited sense of appreciation of this honor you give me to speak, I express with the simple recognition of I thank you. (Applause.)

The President: I am sure that the members of the Association will appreciate our varying the program and hearing from Judge Manton. I want him to recollect that the number of foreign-born resident in the State of Georgia is negligible, a very small percentage. We are 100 per cent American.

Next will be any report that the Executive Committee may have to make at this time.

Mr. Carroll Latimer, of Atlanta: The Executive Committee has applications for membership from the following gentlemen:

APPLICANT	RESIDENCE	ENDORSED BY
O. J. Franklin.....	Eastman .....	H. F. Lawson
Geo. C. Palmer.....	Columbus .....	T. Hicks Fort
S. P. New.....	Dublin .....	Harry S. Strozier
R. N. Hardeman, Jr.....	Louisville .....	Erle Norman
Geo. S. Cargill.....	Savannah .....	Livingston Kenan
W. G. Cornett.....	Athens.....	R. H. Kimball
H. H. Chanler.....	Winder .....	R. H. Kimball
T. Lumpkin Adderholdt.....	Gainesville .....	R. H. Kimball
J. O. Adams.....	Gainesville .....	R. H. Kimball
A. C. Wheeler.....	Gainesville .....	R. H. Kimball
Lewis C. Russell.....	Winder .....	R. H. Kimball
Thos. J. Shackelford.....	Athens.....	R. H. Kimball
A. R. Wright.....	Sandersville .....	R. H. Kimball
Joseph D. Quillian.....	Winder .....	R. H. Kimball
E. D. Kenyon.....	Gainesville .....	R. H. Kimball

The Committee recommends the election of those gentlemen to membership.

Upon motion they were duly elected to membership.

Mr. Latimer continuing: The Membership Committee has presented us with eighty-three new members. The Executive Committee want to express publicly their appreciation of the activity of the Membership Committee and thank them for the same.

For this morning's program we will have a paper first by Mr. Benj E. Pierce, of Augusta, on "Taxation." This will be followed by a paper by Mr. R. R. Arnold, of Atlanta, on "The Tendencies of the Times; Are we Going Forward or Backward?" Mr. Arnold will be followed by Mr. C. Murphey Candler, of Atlanta, who will give us a paper on "Public Utility Regulation in Georgia."

This afternoon we will have a paper by Mr. O. A. Park, on "The History of Georgia as Recorded in the Reports of the Georgia Bar Association;" also a paper by Judge A. B. Lovett, of Savannah, on "The Bench as a School of Law." This will be followed by a discussion of Mr. Lansing Lee's report on Federal Legislation, which will bring before the Association the proposition of a new Federal District or a new Federal Judge for Georgia. Also this afternoon we will have the report of the Committee on Nominations.

Tonight the Association will have the choir of St. John's Church of some forty or fifty voices, and they will give us a musical concert, followed by a dance and some refreshments.

One other matter: The Atlanta Journal wants to get a photograph of the Association and all of the ladies and guests. Immediately upon the adjournment of this meeting we are requested to assemble in front of the hotel, where the photograph will be taken.

Judge A. G. Powell, of Atlanta: I want to ask unanimous consent, Mr. President, to offer a short resolution for the purpose of reference to the Executive Committee to be reported on later. I will read it with your permission:

*Resolved* That, while we are ever unwilling that the influence of this Association should be used in any political way for the advancement of any man's ambition to public office, and are therefore careful expressly to disavow any political purpose in this resolution;

Nevertheless the members of this Association wish to express the sentiment that, if the President of the United States should see fit to appoint to the vacancy in the Chief Justiceship of the Supreme Court Judge William H. Taft, the appointment would be most heartily welcomed by the Bar and the people of our State and section. This illustrious jurist and ex-President is held in such universal love and esteem by the people of all sections of our country, irrespective of their political alliances, as to fit him peculiarly for that great bench, which is and ever should be impartial and non-partisan in its membership.

(Applause.)

The President: Next on the program is a paper by Mr. Benj. E. Pierce, of Augusta, on the subject, "Taxation."

(For the paper by Mr. Pierce, see page 305.)

The President: Next on the program is a paper on "The Tendencies of the Times; Are we Going Forward or Backward?" The gentleman who is going to answer that question for us is Mr. Reuben R. Arnold, of Atlanta. What he is going to say of course I do not know, but I know if he does say things about which you may differ from him, you will find it very difficult to refute them. Ladies and Gentlemen, Mr. Arnold. (Applause.)

Mr. Reuben R. Arnold, of Atlanta: "The Tendencies of the Times; Are We Going Forward or Backward?" I did not realize how extensive that title was until the President read it. I am afraid I took in too much territory.

(For Mr. Arnold's paper, see page 319.)

The President: The hour for our adjournment has arrived. The Association will re-convene in this room at 3:00 o'clock P. M.

## AFTERNOON SESSION, JUNE 3, 1921.

At 3:00 o'clock the afternoon session was called to order in the dining room of Hotel Tybee by the President, Mr. A. R. Lawton, of Savannah.

The President: The meeting will please come to order. The first business to come before the meeting will be the report of the Committee on Nominations, and the election of officers.

Mr. O. A. Park, of Macon: Mr. President, the Nominating Committee at its meeting on yesterday decided that, inasmuch as the President of the Association has come for the last two or three years from one of the larger places in Georgia, it was nothing but fair that one of the smaller towns should be represented in the Presidency at this time. It so happened that the gentleman whom the Committee had in mind for the Presidency had removed from one of the smaller towns to one of the larger places, but we thought that he was a countryman and always had been a countryman, and in the opinion of the Committee he would always be a countryman. We therefore had no hesitancy about departing from the rule announced in the beginning, and selected him. The Committee reports the following nominations:

President—Arthur Gray Powell, Blakely and Atlanta.

First Vice-President—J. R. Pottle, Albany.

Vice-Presidents:

First District—J. A. Brannen, Statesboro.

Second District—J. R. Pottle, Albany.

Third District—John B. Guerry, Montezuma.

Fourth District—H. H. Swift, Columbus.

Fifth District—Hughes Spalding, Atlanta.

Sixth District—R. C. Jordan, Macon.

Seventh District—Barry Wright, Rome.

Eighth District—Z. B. Rogers, Elberton.

Ninth District—W. A. Charters, Gainesville.

Tenth District—Lansing B. Lee, Augusta.

Eleventh District—John W. Bennet, Waycross.

Twelfth District—John S. Adams, Dublin.

Secretary—Harry S. Strozier, Macon.

Treasurer—Z. D. Harrison, Atlanta.

Executive Committee—Walter A. Harris, Chairman, Macon; Raiford Falligant, Savannah; Hal Lawson, Abbeville; Alex W. Smith, Jr., Atlanta.

Judge A. W. Cozart, of Columbus: I move that we accept that report and elect those nominees, and that the Secretary be instructed to cast the ballot of the Association for them.

This motion was seconded and carried.

The President: The Secretary will cast the ballot. The Secretary has cast the ballot, and those gentlemen are elected officers of the Association for the ensuing year.

Next will be a report from the Executive Committee.

Mr. W. Carroll Latimer, of Atlanta: The Executive Committee reports favorably the resolution read by Judge Powell, endorsing ex-President Taft for Chief-Justice, and requests that it may be immediately adopted and that it may be transmitted to the President with a copy to Judge Taft. I make that as a motion.

This motion was unanimously carried by rising vote.

The President: The Secretary will transmit the resolution, as stated in the motion.\*

---

\*The resolution was sent to the President and to Mr. Taft. The Secretary received the following letter from Mr. Taft:

Ritz Carlton Hotel  
Montreal, Canada,  
June 6th, 1921.

My Dear Mr. Secretary,

I am just in receipt of your telegram of June 3rd, in which you advise me of the resolution of the Georgia Bar Association expressing its favorable view of the suggestion of my appointment to be Chief-Justice. I thank the Association for this great compliment and for its kindly expression of good will. I value them much.

Sincerely yours,

Wm. H. Taft.

Mr. Harry S. Strozier,  
Sec'y Georgia Bar Association,  
Savannah, Georgia.

Mr. Latimer, continuing: The following applications have been passed by the Executive Committee with the recommendation that they be elected members of the Association:

APPLICANT	RESIDENCE	ENDORSED BY
G. W. Lankford.....	Lyons .....	Harry S. Strozier
W. L. Bryan.....	Donalsonville.....	Harry S. Strozier
Oliver C. Hancock.....	Macon .....	Harry S. Strozier
T. Ross Sharpe.....	Lyons .....	Erle Norman
C. Don Miller.....	Atlanta .....	Chas. B. Shelton.

That makes eighty-eight new members at this session. I move that the Secretary be instructed to cast the ballot of the Association for the election of these applicants to membership.

This motion was seconded and carried and the ballot cast as directed.

Mr. Latimer, continuing: The Executive Committee wishes to call the attention of those present who have not reserved their berths home, to the fact that Mr. Stewart, of the Central of Georgia, is in the lobby with the diagrams and will be in the lobby during the afternoon to make reservations if the members desire.

Attention is again called to the fact that St. John's choir of forty or fifty voices will give us a musical concert this evening, which will be followed by a dance, and this will be in the hotel instead of on the pavilion.

The Secretary requests everybody present who has not done so to register. The only way a roster can be made up of those present is by the registration cards furnished the Secretary. So we will be glad to have those who have not registered to do so immediately.

The program this afternoon will consist of a paper by Hon. C. Murphey Candler on "Public Utility Regulation in Georgia," followed by a paper by Judge A. B. Lovett, of Savannah, on "The Bench as a School of Law." This will be followed by a paper by Mr. O. A. Park on "The History of Georgia as Recorded in the Reports of the Georgia Bar

Association," and, if possible, a discussion of the report of Mr. Lansing Lee will be taken up.

Tomorrow morning we will meet at 10:00 o'clock, and we will have a paper by Mr. Robert M. Arnold, of Columbus, on "Sunday Legislation," and various reports are to come before the Association for discussion, including the discussion of the establishment of an additional Federal District or the appointment of an additional Federal Judge.

The President: Judge Cozart has something to say. This is by request, and he desired this stated; for this being his only appearance on the floor, he did not want to be considered as "butting in." (Laughter.)

Judge A. W. Cozart, of Columbus: Mr. President and Gentlemen of the Bar Association: Judge Joel Branham, of Rome, will be eighty-six years old next August. He has been practicing law for sixty-seven years. He is perhaps the oldest member of the bar in the State now, and he certainly is a most beloved and respected member of this Association. Since Judge Bleckley's death I believe he is the most unique character at the bar in this State.

On account of his great love for the members of our profession he has with great care prepared a beautiful booklet entitled, "The Old Court House in Rome. Sketches and Reminiscences of Deceased Judges and Lawyers, Who Presided and Practiced There 1866-1920, Fifty-Four Years; With a Section on Uniformity of Law." These you can have by applying to the Secretary, who will be delighted to furnish you with a copy.

In order that you may know just exactly how very entertaining it is, I want to read one paragraph which will take about two minutes of your time. In regard to the case of Welborne v. The State, 114 Ga. 793, he has this to say:

"The Welborne case came by writ of error from the Criminal Court of Atlanta. At that time there were writs of error from fourteen other City Courts pending in the Supreme Court. The Court gave notice to counsel of its intention to settle the status of the City Courts, and of the

jurisdiction of the Supreme Court to review their judgments and decrees. The Court said this is done that 'doubts existing as to the question of jurisdiction might be removed,—so that litigants and their counsel, at least in the future, may have no question as to the remedies, which the law gives them.'

'Counsel nominated seven of their number to argue the questions. They filed a joint brief, and three of them made oral arguments. The Court defined a Constitutional Court, in the first head note of the case, and said in conclusion: 'That this court has jurisdiction to review the decisions of those City Courts in this State, which have been established at county sites which were Cities when the acts under which the City Courts were established were enacted, provided such act prescribes a jury of twelve upon demand of either party, and provided such Court has both civil and criminal jurisdiction over the limits of the city in which the court is located, or over the entire county, criminal jurisdiction over the city and civil jurisdiction over the county, or civil jurisdiction over the city and criminal jurisdiction over the entire county.'

"They are 'like Courts':

1. If they embrace the county site;
2. And if the county site was a city at the time the Court was established;
3. And if the act creating the court prescribed a jury of twelve men on demand of either party;
4. And if they have civil and criminal jurisdiction over the city;
5. Or civil and criminal jurisdiction over the county;
6. Or criminal jurisdiction over the city, and civil over the county;
7. Or civil jurisdiction over the city, and criminal over the county.

Seven features of two persons—three in common and four independent:

"His persone may be unlike and discordant in every other respect. If he has a big nose, big mouth, and square jaw, and also has:

One eye and one ear,  
Or two eyes and one ear,  
Or two ears and one eye,  
Or two eyes and two ears,  
he is like his parents, and they cannot disown him. If he has not either one or the other of these four, he is a bastard and an outcast."

The President: The Secretary has an announcement of a telegram to make.

The Secretary: Yesterday the Association directed me to wire the Bar Association of Arkansas, which is in session at Hot Springs, the greetings of the Georgia Bar Association, which I did. I have received this telegram directed to me as Secretary of the Association:

"Your kind greetings read before our Association. By unanimous vote I am directed to express to our brethren of the Georgia Bar Association our highest appreciation and best wishes for a wonderful meeting.

Roscoe R. Lynn,  
Secretary Arkansas Bar Association."

The President: The chair will reappoint the present Committee on Legislation to serve for the ensuing year as follows:

B. J. Fowler, Macon, Chairman;  
Raiford Falligant, Savannah;  
A. H. Thompson, LaGrange.

The chair also appoints the following delegates to the American Bar Association:

Harry S. Strozier, Macon;  
Warren Grice, Macon;  
T. A. Hammond, Atlanta.

We come now to the regular items of the program. We have first on the program a gentleman who used to be a lawyer, and I am sure he has never forgotten how to be one, the Hon. C. Murphey Candler, who was a member of the bar and a very able one. He was making a great success of the profession of the law. He drifted into business, and has drifted into public service, and his drifting into the

public service has been his loss and Georgia's gain. It would be unnecessary to introduce him to any audience in Georgia. but we will now have the pleasure of hearing from him on the subject of "Public Utility Regulation in Georgia." (Applause.)

Mr. C. Murphey Candler, of Atlanta: Mr. President, Ladies and Gentlemen of the Georgia Bar Association: When I appear before a body of Georgia citizenry in these latter days, I am not quite sure whether it is as complainant or defendant. At any rate, however, I am satisfied that, after I shall have read this brief paper, my relations to this individual body will be pretty firmly established.

(For the paper by Mr. Candler, see page 139.)

Judge S. B. Adams, of Savannah, referring to the reception of Mr. Candler's paper by the Association: This tribute to Hon. C. Murphey Candler is spontaneous. No public servant ever deserved it more completely. Every man who knows him knows that when he read any suggestion that reflected in the slightest upon his official or personal integrity, he was reading a vile unfounded slander. (Applause.)

The President: The chair will take the liberty of saying that forty-odd years ago as a member of his class he had that opinion of him, and foresaw what a splendid public servant he would be. (Applause.)

The next paper on the program is a paper by Judge A. B. Lovett, formerly of Sylvania, recently a valued acquisition to the citizenship of Savannah, who will tell us about the "Bench as a School of Law." (Applause.)

(For the paper by Judge Lovett, see page 350.)

The President: The chair desires to express his thanks to the last two speakers for having disclosed the fact that they were the personal choice of the chair.

No session of this Association would be complete without Mr. Orville A. Park. He has been with us for twenty-six years. He is going to talk about "The History of Geor-

gia as Recorded in the Reports of the Georgia Bar Association."

Mr. Orville A. Park, of Macon: Mr. President, thirty-eight years ago at the first session of the Georgia Bar Association your father and mine spoke from the same platform. I esteem it therefore a peculiar honor that his son and my father's son should have this opportunity of speaking before this Association.

Please do not get frightened at the size of this manuscript. I have not the slightest idea or intention of reading any considerable portion of it. It was prepared for publication and not for reading. I am going to try to give you a little of it in spots, in order that possibly you may be inspired to read it after it is put in print.

(For the paper by Mr. Park, see page 154.)

The President: That is the last item on the program. The entertainment tonight, in which we are going to have music and dancing and refreshments will be at 8:30 o'clock in this hall.

On tomorrow we have a very interesting program, including a discussion of the question of a new Federal District or a new Federal Judge in this State. We will meet at 10:00 o'clock, and we hope everybody will be on hand promptly at that hour, when we will proceed with the completion of the program for this session of the Association.

The afternoon session was then adjourned.

---

### MORNING SESSION, JUNE 4, 1921.

The morning session of the third day of the Convention was called to order at 10:00 o'clock in the dining room of Hotel Tybee by the President, Mr. A. R. Lawton, of Savannah.

The President: The Association will be in order. The first item is the report from the Executive Committee.

Mr. W. Carroll Latimer, of Atlanta: The Executive Committee has had presented three applications for member-

ship in proper form, and they move the election to membership of the following applicants:

APPLICANT	RESIDENCE	ENDORSED BY
B. B. Heery.....	Savannah .....	H. G. Dukes
John R. Cooper.....	Macon .....	Harry S. Strozier
F. R. Youngblood.....	Savannah .....	A. A. Lawrence

That makes approximately ninety new members.

The motion to elect these applicants to membership was then put to vote and carried.

Mr. Latimer, continuing: The Committee on Resolutions reports favorably a resolution offered by Mr. Z. B. Rogers, of Elberton, to amend Article 1 of the By-laws by striking out the words "open each meeting with," and inserting in lieu thereof the word "deliver," so that same shall read: "The President shall preside at all the meetings of the Association, and shall deliver an annual address."

Judge A. W. Cozart, of Columbus: I move that that amendment to the by-laws be adopted.

This motion was seconded and carried.

Mr. Latimer, continuing: The Committee reports adversely the following resolution:

*Resolved* that Article VII, paragraph 6 of Constitution and By-laws of Georgia Bar Association relating to the duties of the Committee on Ethics and Grievances be and the same is amended by adding thereto the following:

The Committee shall receive and answer as early as practicable all questions submitted to it, and in its discretion publish the same for public information.

The Committee adversely reports that resolution.

Mr. D. G. Fogarty, of Augusta: I move that the adverse report of the Committee be sustained.

This motion was seconded and carried.

Mr. Latimer, continuing: The Committee reports adversely the following resolution:

*Resolved* that Article XII of the By-laws of the Georgia Bar be amended by striking the first paragraph thereof.

The first paragraph is the paragraph providing for the Committee on Nominations. The Committee reports that resolution adversely.

Mr. Fogarty: I move that the adverse report of the Committee be sustained.

This motion was seconded and carried.

Mr. Latimer, continuing: A resolution which has been passed by the Bar Association of other States is reported from the Executive Committee with the request that it be passed by this Association. The resolution is as follows:

*Whereas* there is pending in Congress the following resolution:

#### CONCURRENT RESOLUTION

*Resolved by the Senate of the United States (the House concurring),* That a joint commission is hereby created, which shall consist of six Senators to be appointed by the President of the Senate, and six Representatives to be appointed by the Speaker of the House, to consider such legislation in relation to the Courts of the United States, the procedure therein, and the judges thereof, as would tend to improve the administration of justice; and to report to the Congress a bill to carry the recommendations of the joint commission into effect.

*Be it Resolved,* That this Association endorses said resolution, and hereby goes on record as favoring its passage.

The President: The chair makes this suggestion in reference to that resolution—that it lie on the table until you receive the report of the Committee on Federal Legislation, and that the two be considered together.

Mr. Latimer: That was the desire of the Committee.

The Executive Committee brings forward several resolutions, the first of which is as follows:

*Resolved,* That the Georgia Bar Association hereby expresses its very great appreciation to the Savannah Bar Association and members of the Savannah Bar for their hospitality and for their efforts to make this meeting a success.

Judge Alex. C. King, of Atlanta: I move the adoption of the resolution.

This motion was seconded and carried.

Mr. Latimer, continuing: The next resolution is as follows:

*Resolved*, That the Georgia Bar Association expresses to the choir of St. John's Church, Savannah, its deep appreciation of the delightful entertainment afforded the members of the Association on the evening of June Third.

Judge A. W. Cozart, of Columbus: I move that that resolution be adopted.

This motion was seconded and carried.

Mr. Latimer, continuing: The next resolution is as follows:

*Resolved*, That the Georgia Bar Association does hereby express its appreciation of the courteous and efficient entertainment of its members by Mr. E. L. Hinton, Manager of Hotel Tybee, and his entire corps of employees.

Judge Cozart: I move the adoption of that.

This motion was seconded and carried.

Mr. Latimer, continuing: The program for to-day will be, first, a paper by Mr. Robt. M. Arnold, of Columbus, on "Sunday Legislation." There will be short addresses or informal talks by Mr. A. L. Franklin and Mr. Roland Ellis, the nature and character of which you will discover when they get on the floor. This will be followed by Reports of Committees, which includes the Report of the Committee on Federal Legislation by Mr. Lansing Lee, which will bring before the Association the discussion of the present situation in Georgia with reference to a new Federal District or a new Federal Judge. This will be followed by miscellaneous business.

The President: The first thing on the program is the reading of a telegram from Shreveport, La., to the Secretary as follows:

"The Louisiana Bar Association acknowledges with

thanks receipt of your telegram, and sends greetings and good wishes to Georgia Bar Association.

W. W. Young, Secretary."

This will be placed in the files of the Association.

Next on the program is a paper by Mr. Robt. M. Arnold, of Columbus, on the subject, "Sunday Legislation." (Applause.)

Mr. Robt. M. Arnold, of Columbus: I had prepared quite an extensive paper on this subject, but I will read only parts of it, and will refer you to the record for the complete text.

(For the paper by Mr. Arnold, see page 358.)

The President: The Georgia Bar Association has a great many well beloved members and always has had them. We have always had some who are especially, universally and particularly loved and admired. It has not been very long since our National Government reached out and took from us one of our best beloved, a leader of our bar, and took him to high office. It has been a shorter time since that they made up their minds that they wanted him permanently without reference to the shiftings of politics. On both occasions the Georgia Bar congratulated the United States on their appointee to office. Judge King is with us to-day, and I want him to say a few words to us. (Applause.)

Judge Alex. C. King, of Atlanta: Mr. President, my old friend, my brethren, and (shall I also say) my sisters of the Georgia Bar: To say to you that I am deeply impressed by the enthusiasm of your welcome is to feebly express what is in my heart. To say to you that I appreciated the resolutions, to which your President has referred, is simply to say nothing of the impression which they made upon me at the time and which will ever be with me to the end of my life. There is nothing in the whole course of my life that I have valued so much as the feelings that have been expressed to me by my brethren of the Georgia Bar.

I have been with this Association from its creation. I was present, Mr. President, at the meeting in the old State

Library in the Capitol at Atlanta, in which your honored father called together some of the Bar of Georgia for the formation of this institution. I have been a member of the Association from that time until this, and at no period have I expressed aught but the warmest affection for the members of this Association; and I have felt humbled in my appreciation of all that you have done for me. It is far beyond any right to which I might lay claim. I can only thank you. I can only say how much I appreciate all you have done for me and all you have said to me. I feel in the language of Burns that all I can say is:

The monarch may forget his crown  
That on his head so late hath been;  
The bridegroom may forget his bride,  
That was his own but yestereen  
The mother may forget the child,  
That rests so smiling on her knee;  
But I can ne'er forget Glencairn,  
And all that thou hast done for me.

(Applause.)

After listening to the magnificent papers that have been read before this Association, and all that has been said here, I feel that there is nothing new I can bring to you or anything I can say that would be of any particular value. I have been impressed, however, with the idea that in all the discussions and all through the papers, there has run a feeling of the great spirit of unrest which there is in the country. I have noticed, it seems to me, a desire on the part of everybody, especially outside of the members of the bar, to reach ends by short cuts, as it were by force, rather than by submitting to the orderly processes of the law. In this country we talk about the sovereign people and I think that the expression is frequently used in a very unsound sense—in a sense which has produced perhaps a great deal of criticism. The people at large look upon the voice of the people as the voice of the majority. They look upon the sovereign people as any assembly which may come together; and yet the sovereign people which we speak of in this coun-

try is not any mere majority. It is not merely the voice of the majority speaking where they happen to assemble, but the people, the sovereign people, is the organic whole. It is an abstract idea which imports minority as well as majority and it speaks only through the organs of the law and with the voice of the law. The real sovereign in this country, because it represents the sovereign people and is its only concrete representative, is the sovereign law. When we speak of a sovereign, we think of allegiance; and when we come to think of allegiance, we think of taking an oath of allegiance. What is the oath of allegiance in this country? We do not swear to support any president, or any ruler, but we, especially we of the bar, take an oath to support the sovereign law, as expressed by the Constitution of the United States and of our respective State and all law constitutionally passed.

Now, it seems to me that the great need of the present day is to teach the people all over the country the idea that the real sovereign in this country is the law; that there is no sovereign right in a mere majority; that there is no sovereign right in a crowd; that the only way in which there is any right to coerce individuals or minorities is through the law, or the organization of the law and the officers of the law. I think the function of the bar of the state is to preach that doctrine everywhere, that the only sovereign in this country is the sovereign of the law and the only sovereignty the sovereignty of the law.

We talk a great deal about patriotism. We have had a patriotism in time of war, a splendid patriotism, and no class of the community has been more patriotic than the lawyers. They have been patriotic on every field, on the field of battle and on every field of endeavor. There is also a patriotism of peace. The patriotism of peace is to uphold the law, and I call upon all of you to renew the pledge which you took when you took your oath as a lawyer, to support the Constitution of the United States and the Constitution of the State of Georgia and all law constitutionally passed, and to pledge again your support to that law of which it

has been said that its seat is the bosom of God and its voice the harmony of the world. (Applause.)

Judge A. W. Cozart, of Columbus: While we all greatly regret that Senator Borah did not come, I am sure we are glad Judge King did come.

The President: My honored father, to whom Judge King has just referred as the one who called the first meeting of this Association together, had very few stories, and it is but natural that I remember all of his stories just as I am sure that my son will never forget any of mine because he has heard them so often, this one included. The Hibernian Society in Savannah was always an institution of good cheer. Sometimes they had high-brow dinners, and sometimes a little of the low-brow, although during the Presidency of Judge Meldrim he never would allow anything but the high-brow.

A well-known member of the bar in Savannah in the *ante-bellum* days, the away-back *ante-bellum* days, was John Huguenin Thomas, who at these dinners frequently became more or less inebriated. He had carefully prepared a very able speech for one of these occasions, and in order that he might have sufficient fire in the delivery of his speech he had not forgotten to partake of the well-known cup that cheers. He had handed his manuscript to a friend, fearing that he might forget it, so that this friend could prompt him. He started to speak. There was sitting just opposite him, Pete Dorney, very regular in his attendance, who had also participated to some extent in the liquid cheer of the evening. Thomas started to speak: "Misther Ch-ch-chairman and g-g-gentlemen, why are we here?" Then he leaned over to his friend who was to prompt him and who whispered to him, but not distinctly for the same reason. He started again: "Misther Ch-ch-chairman and gen-gentlemen, I r-r-repeat why are we here? He leaned over again to his friend, who tried to prompt him, but Thomas didn't catch it. He started again: "Mis-misther Ch-ch-chairman and gen-gen-gentlemen, as I have said before, w-why are we

here?" Pete Dorney then said: "W-w-well, I'll give it u-u-up." Then Thomas turned on Pete and said: "S-s-sir, you are no gen-gentleman to in-interrupt a gen-gentleman in his oration." Pete replied: "W-w-well, I beg yer pardon. W-was that an oration? I-I-I thought it a c-c-c-conundrum." (Laughter.)

Well, that conundrum has never been answered. It is still a great conundrum. It is going to be answered this morning. We have on the program a debate on the subject, "Why Are We Here?"

The affirmative of the question is going to be championed by Mr. A. L. Franklin, of Augusta, and the negative by Mr. Roland Ellis, of Macon. Mr. Franklin will please come forward.

Mr. A. L. Franklin, of Augusta: Ladies and Gentlemen: My speech is divided into two classes, one for the Associated Press and the other for home consumption. (Laughter.) I am frank to say to you that I am not unmindful of this honor that you have conferred upon me in asking me to speak on this occasion when you found out that Senator Borah could not be here. In justice to the Executive Committee, however, I am frank to tell you that when they originally invited me, they did not think I could be here. (Laughter.)

I have not been long a member of this Bar Association, though a member of the bars for some years, but since I have been coming here I have discovered, just like any wise man will discover after he has been coming for some time to a place, that in all probability the manner of selecting the President of this Association is not exactly the proper one. So for the last few days I have been a little busy with my friends, Yeomans and Phillips and others, to see if the particular element I represent did not have some chance on this Nomination Committee. This reminds me of a story of an old darkey preacher down in our town who was called to a church. They had selected a night for his reception and had selected one of the deacons to introduce him. The

deacon got up and introduced this newly-elected preacher, and the preacher when he got up to reply, said to this deacon: "Who are you? Are you a member of the organization?" "Yes, I'se a deacon." "How did you come to be a deacon?" "Well, the rough-neck element in this church wanted representation on de board and dey riz up and elected me. (Laughter.) So, when we made our complaint known during the last few days, to the effect that the roughneck element was never represented, the Nomination Committee said, "you will be entirely satisfied now for we have named Arthur Powell President." (Laughter.)

Now for the next year, boys— I speak to you rough-necks more specifically, for I represent you—we want to look out for our element. I am reminded in that connection of the story of the missionary to China who came back to this country some years ago to create some interest in the Chinaman. The people had been driven and campaigned and "drived" and "droved" until they were about exhausted and this fellow consequently had a very unappreciative audience. In the course of his speech, he said, "Do you know that China is one of the biggest nations on earth?" Everybody yawned. "Do you know that in China there are four hundred millions of people?" They kept twisting about in their seats, still uninterested. "Then," said he, growing more emphatic, "do you know that every fourth child born in this world is a Chinaman?" A little boy on the front seat who had two brothers went home from the meeting and said, "Mother, the next child that comes in this here house is gwine ter be a Chinaman." (Laughter.) I may be wrong about it, but it looks like to me that the next President of this Association is going to be my friend, Yeomans. (Laughter.)

Gentlemen, I have heard more about the Constitution since I have been here at this session than I ever heard before, but, my friends, you don't realize that the Constitution don't amount to anything to a married man anywhere he goes. (Laughter.)

I went down day before yesterday to the pavilion, and the County Officers were having a little meeting down there, about ninety-five of them, and I saw my friend Judge Luke up there making a speech. I got up pretty close to them and Luke was saying, "Boys, do you know" (and he would look around to see if anybody was there except the boys) "do you know that the abolition of this fee system would be the worst thing that could happen to this State?" (Laughter.) He says: "What I am saying to you here today may be unpopular, but I say what I think and I stand where I am." (Laughter.) One of my friends of the county officers came into breakfast with me the next morning, and he said to me, "We had a good meeting yesterday; Judge Luke made us a speech, and he is right dead with us." I said, "Is that so?" Well, so much for that. (Laughter.)

I have not been a member of this organization very long, but since I have been a member I have been a constant attendant and I am very much impressed with the personnel of this organization and the very high order of men that you have been selecting for its presidents; and it will only be by a continuation of these wise and sane selections that we shall hold the very high standard which we now possess among the Associations of this country.

I have also noted that the majority of the members of the bar bring with them their wives and their daughters, and I hope that they will continue to do this because it is by your sweet gentle influence that life is worth while at all. If we are to believe the papers and magazines and the lecturers that we have been listening to for the past two years, if the high standard of Americanism and the ideals of America are to be maintained and sustained, it has got to be through the efforts and labor and conscientious service of the Southern people, chief among whom you are which. I only hope that every member of the bar will fully appreciate this great high duty, this responsibility. For the last two years it has been brought to our attention as never

before that right here in the South you will find more Americanism than in any other part of the country.

I enjoy, as I know you do, these occasions, on which, we can meet and have this friendly and social comradeship which we have enjoyed for so many years past, and I look forward to our next meeting with a great deal of anticipation and pleasure.

I thank you. (Applause.)

Judge A. W. Cozart, of Columbus: Mr. Roland Ellis promised me yesterday that he would be here to take part in this delightful program, but he has been called to Macon in the last few minutes. (Laughter.) And I want to ask, Mr. President, if you won't insist on a member of the Executive Committee telling us the anvil story. I refer to Mr. Dan Fogarty. That story is new, and I want you to make him tell it.

The President: Well, I make him.

Mr. D. G. Fogarty, of Augusta: Mr. Chairman, Ladies and Gentlemen: Lon Franklin is the humorist of our Bar—

A Voice, interrupting: Well, where is Henry Hammond?

Mr. D. G. Fogarty, continuing: Well, Henry is a sort of a satirist, not a humorist. He is a satirist, a crank, and God knows what else. (Laughter.) Brother Franklin here is the humorist of our bar. Now, I have told this story several times I think in the hearing of brother Cozart. It was told to me a long time ago by a good Irishman in Augusta. It was said that an Irishman was working on a wharf in New York. Work got very scarce, and it became necessary to discharge him. The foreman rather roughly put him off. The poor devil went home to his wife and seven children and in the course of a very few days their meagre savings had disappeared. Driven by necessity, he wandered down along the water front seeking employment, unsuccessfully. Finally he decided to see an old friend of his named Cassidy, who was foreman of a government gang on one of the piers. He approached Cassidy and said, "Cassidy, do you mind, cum here; I want ter talk wid yez." Cassidy

came over and said, "What is it?" "Cassidy, I was woorking on the North wharf above and shipping got rather scarce, and they put me off, do you mind. I have saved a leetle money and I went home, and you know I've got sivin children, and God knows the savings didn't last long between the ole woman and the sivin children: I'm dead broke an I've not a cent in the woorld. We haven't a thing in the house to eat, and I cum doon here as the last risort to ask yer as a frind to give me a job." "I have no job to give you. I've just put off two men," Cassidy replied. "Well, Cassidy, don't go away now; do something for me for God's sake." "No, go on," said Cassidy. "I've got nothing; go somewhere else. No, hold up; I'll tell you one thing I can give you to do." "Well, give me something to git bread and meat for the wife and children." "You see those anvils there; I want you to take those and put them in the hold of that boat." The Irishman picked up an anvil, walked across the gang-plank, and deposited it in the hold of the boat. He saw Cassidy was watching him and he came out and picked up another anvil and walked down the gang-plank, and deposited it in the hold of the boat. He came out again and saw Cassidy was still watching him, and he thought he would show Cassidy what a real Irishman he was. So he picked up one anvil under one arm and another under the other arm and started down the old gang-plank. He lost his balance, reeled from one side to the other and finally went over into the water. They yelled "man overboard" and there was much commotion, and finally the Irishman came up and spluttered out, with his mouth full of water, "Throw doon the rope." Before they could do anything, he went under again, and coming up the second time he spluttered, "throw doon the rope, you bloody spalpeens, or I'll drop the damned anvils." (Laughter.)

The President: The debate, gentlemen, is closed. The conundrum is answered. We are evidently here to hear these delightful specimens of humor from the members of the Bar of Augusta.

The next item on the program is the Reports of Committees which have not yet been disposed of. First, is the Report of the Committee on Jurisprudence, Law Reform and Procedure, of which Mr. I. J. Hofmayer, of Albany, is Chairman. This report has been printed and distributed to all the members of the Association. The report is now before you.

Judge A. W. Cozart, of Columbus: That is a splendid report, and no doubt all the members have read it with interest, and the legislators will read it with profit, if they will act on it. The Legislature has been doing very much better in the last few years by the Bar Association. They have adopted a great many things we have suggested.

I want to add two suggestions. One is changing the section of the Code making mayhem a misdemeanor so as to make it a felony. Judge Hardeman presiding in an emergency division of Fulton Superior Court recently sentenced a woman for one year for throwing carbolic acid in the face of another and he said it was unfortunate that it was not a felony. That will meet the approval of every member of the Judiciary Committee. If it is a bad case like throwing carbolic acid in a woman's eye, or in my own good eye, it ought to be a felony.

The next suggestion is that there is no way to cancel a lost mortgage. Every lawyer who examines a title has had great difficulty in passing a title, where a mortgage has been lost. Laymen don't see the importance of taking them down to the courthouse and having them cancelled. A quit-claim deed, if the mortgage has been transferred, doesn't cover the case. A great many mortgages do not recite when the debt is to become due. There should be some easy way to cancel a lost mortgage. As I say, every lawyer, who ever examined a title, has had that trouble to confront him, and I am astonished that no member of the Legislature has ever seen fit to try to remedy that. I think the way to do it is to require a transfer to be entered of record within a reasonable time, and then a quit-claim deed from the original holder

or transferee of the mortgage should be tantamount to a cancellation of the original paper. I am not sure that that would be the best remedy, but somebody ought to take that matter up and do that.

I just wanted to add those two suggestions to the report of that Committee.

The President: You move to amend the report of the Committee to that extent?

Mr. A. W. Cozart: Yes sir.

The motion to amend the report of this Committee to that extent was then put to vote and carried.

(For the Report of the Committee on Jurisprudence, Law Reform and Procedure, see page 412.)

The President: The Report of the Committee on Legislation has already been presented. The Report of the Committee on Federal Legislation comes later. Next is the Report of the Committee on Interstate Law.

The Secretary: Judge Merill, Chairman of that Committee, has filed a report with me as Secretary.

The President: It contains no special recommendations, and will be filed and published in the proceedings.

(For the Report of the Committee on Interstate Law, see page 415.)

The President: Next is the Report of the Committee on Legal Education and Admission to the Bar, Mr. E. W. Moise, of Atlanta, Chairman.

The Secretary: Mr. Moise has filed his report with me as Secretary.

The President: It will be filed and published in the proceedings.

(For the Report of the Committee on Legal Education and Admission to the Bar, see page 427.)

The President: Report of the Committee on Membership, Mr. H. H. Swift, of Columbus, Chairman. We have had very tangible evidence of the activities of this Committee. Mr. Swift, have you any formal report to make at this time?

Mr. H. H. Swift, of Columbus: I have no other announcement to make than that approximately ninety new members have been added to the membership of the Association.

The President: If it were not contrary to the by-laws, we would have a vote of thanks given to Mr. Swift. He knows, however, that he has the thanks of the Association for the work of his Committee.

The Committee on Memorials has already reported. Next is the Report of the Committee on Legal Ethics and Grievances, of which Mr. W. H. Barrett, of Augusta, is Chairman.

The Secretary: Mr. Barrett has filed that report with me as Secretary.

The President: It will be filed and published in the proceedings.

(For the Report of the Committee on Legal Ethics and Grievances, see page 429.)

The President: Next is the Report of the Permanent Commission on the Revision of the Judicial System and Procedure in the Courts, Judge Andrew J. Cobb, of Athens, Chairman. Our beloved Judge Cobb is absent.

The Secretary: Judge Cobb wrote me that he would not be able to come and he submitted his report. It is very short, and recommends nothing special for the consideration of the Association.

The President: Let it be filed and published with the proceedings.

(For the Report of the Permanent Commission on the Revision of the Judicial System and Procedure in the Courts, see page 432.)

The President: The next item on the program is miscellaneous business, which means new business, and opens wide the door to any members, who have any miscellaneous business to bring before the Association.

The Secretary: I have a matter I want to bring before the Association. There have accumulated through the years

in the office of the Secretary a large number of the reports of the Association from the first. I have those reports in my office in Macon. They are not doing anybody any good and they are very valuable. Reports for three or four or five years are out of print, but there are some years of which we have a large number. I thought the members of the Association would like to have these reports. I can make arrangements, if the Association desires, with the J. W. Burke Company to ship them out to members of the Association who may want them at a cost of about 50 cents a volume. I should like to know what the Association wants to do about them.

I would like for you to consider this also. We get large numbers of requests from law libraries all over the country for back numbers of our reports. If there is a general distribution of them among the members of the Association, there will not be any left for that purpose. Large numbers of libraries are very anxious to get these reports.

I want to submit that matter to the Association and find out what you want me to do with these reports which now are not doing anybody any good.

The President: Would it not be proper to refer that matter to the incoming Executive Committee with power to act?

The Secretary: The only reason I wanted to bring it up here now is, if we are going to distribute the books, to let the members of the Association know about it. It has been referred to the Executive Committee two or three times, and nothing has been done about it, I merely want the members to know that we have these books, and, if they want to take any action about it, I am ready to start to distributing the books now.

Mr. Lansing B. Lee, of Augusta: Since Mr. Franklin's "element" is now represented, I move that the matter be referred to the Executive Committee with power to act.

This motion was seconded and carried.

The President: The Chair would like to take the liberty of suggesting that the Georgia Historical Society, which has a large library, does not possess the Reports of the Georgia Bar Association, and it would be highly appreciated if they would be sent to them for this particular library.

Mr. M. J. Yeomans, of Dawson: I realize the importance fully of the Georgia Historical Society, and, if I am not out of order, or if I am in order, I make a motion that the Secretary be requested to furnish a complete set of the Reports of this Association to the Georgia Historical Society, which I think would be the proper thing to do, and to put it in future on the permanent mailing list. I think action should be taken by this Association now, and I make that motion.

Mr. F. M. Oliver, of Savannah: I second that motion.

The motion was then put to vote and carried.

Mr. W. W. Gordon, of Savannah: Referring to the gratifying increase in the membership of the Georgia Bar Association, I would like to suggest that the American Bar Association is anxious to increase its membership. I am Chairman of the Committee working in Georgia as well as other States with the view of increasing its membership.

Besides the desirability of belonging to an Association of that kind, the material benefit in receiving the magazine alone, even though a member cannot attend the annual meetings, should be seriously considered. The magazine is one of the leading legal magazines of the country. We too have an especial interest in supporting and keeping up the Association due to the fact that two of our Georgia members of the bar have been honored with the Presidency, the honored father of our President, General Lawton, and quite lately General Meldrim.

I want to extend an invitation to every member of the Georgia Bar Association to affiliate with the American Bar Association.

The President: The chair desires very earnestly to endorse what Mr. Gordon has said. The American Bar

Association is a splendid organization over forty years old now. I also take the liberty of adding to what Mr. Gordon has said that the gentleman to whom he has just referred, who called together members of the Georgia Bar to organize the Georgia Bar Association, was also one of the original twelve called together to organize the American Bar Association in 1878 or 1879.

It is our duty to give support and aid and comfort to that Association and I cannot too strongly urge upon members of the Georgia Bar Association that all members of the Georgia Bar Association in good standing should also join the American Bar Association. It is a high-class organization doing a very valuable work, and its reports are of very great value.

Mr. T. A. Hammond, of Atlanta: In connection with that, this Association has on several occasions made an appropriation of \$100.00 to assist in defraying the necessary expenses of the work done by the Commission on Uniform State Laws. As far as the State of Georgia is concerned, it has no power to make any appropriation in that direction. Many of the States do make special appropriation, but the only assistance that Georgia has ever rendered, has been through the Georgia Bar Association.

I wonder if the treasury is in condition to again make that donation or appropriation of \$100.00. If it is, I would like to make a motion that that action be taken, and that the Treasurer be authorized to remit the Treasurer of Commission on Uniform State Laws for this year a subscription of \$100.00.

The President: Instead of taking up here the question of the condition of the treasury, suppose you make your motion that that be done, if in the opinion of the Executive Committee the condition of the treasury justifies it.

Mr. Hammond: I will let that be the form of my motion.

The motion was seconded and carried.

The President: The chair will take the liberty of suggesting that the best way for the Georgia Bar Association to show its work is to have some of these Uniform State Laws passed in Georgia. Georgia is the only State in the Union that has not passed a single one of the uniform laws which have been recommended by that Commission. Every State has adopted the Uniform Negotiable Instruments Acts except Georgia, and there is no other State that has not adopted several of the others. I think it is up to you to do something about it. There is no dispute as to the desirability of uniformity in that class of legislation covered by the most excellent work of that Commission.

Judge A. G. Powell, of Atlanta: The Land Registration Act of Georgia was modeled after one made by the American Bar Association. The Commission which drew the Land Registration Act for Georgia, knew the text of the American Bar Association's Act, and made it applicable to Georgia.

The President: That's quite a relief. The Chair thanks you for that information.

The next item is the Report of the Committee on Federal Legislation, Mr. Lansing B. Lee, of Augusta, Chairman. In connection with it comes the consideration of the question of the Federal Courts.

Mr. Lansing B. Lee, of Augusta: Since the telling of anecdotes seems not inappropriate at the closing of the session, I ask your indulgence for a moment while I tell you a story, of which I am reminded on being called on for my report in the last few minutes of the session. It has been said that the story was applicable to myself, but I hasten to deny that that is the fact. An ex-service man was on the program at a patriotic gathering. Many speakers had occupied the attention of the audience. The audience was restless. As the eighth speaker the ex-service man was introduced to the audience. Almost with one accord the audience arose, and began to leave the room, and the master of ceremonies in great nervousness and embarrassment shouted:

"Hold on; stop; wait a minute; come back; this man went through hell for us two years ago, and we ought to do the same thing for him now." (Laughter.)

Mr. President, your Committee has been somewhat embarrassed because of the brevity of its report in comparison with the other papers that have been read before the Bar Association, and so we are tempted to place our part on the program on a parity with other members by presenting two reports. One refers to matters of legislation enacted during the past year, and is in the nature of a formal report. That I ask leave to file with the Secretary without reading. The other I will read to you.

(For the Report of the Committee on Federal Legislation, see page 434.)

Mr. Lee, continuing and reading the other report: In view of the congestion of business in the Federal Courts of this State and the crowded condition of their dockets, the President of this Association has referred to this Committee the question of the creation of an additional Federal Judicial District in Georgia, with the request that the Committee investigate and report its recommendations to the Association.

Accordingly we have investigated the question by conferring with Judge Samuel H. Sibley, of the Northern District and Judge Beverly D. Evans, of the Southern District, with many other officers of the Federal Courts, and with a large number of members of the State Bar. Testimony comes from every source to confirm the estimate of the situation previously formed by the individual members of your Committee, and we now find and so report to the Association that our Federal Court calendars are very much overcrowded and our Judges overworked. In spite of the fact that the Courts are almost continuously in session, the business of the Courts is accumulating so rapidly, in a number of the divisions, that it is impossible for the two Judges to dispose of it, and the Courts are getting fur-

ther and further behind with no prospect of clearing their dockets.

Your Committee finds also that in no other State in the Union where the volume of business approximates that in Georgia, are there only two Districts and two Federal Judges. On the other hand, in Alabama and Tennessee, for example, where both population and area are smaller, and the business of the Federal Courts is much less, there are three districts.

Both of the District Judges in Georgia have advised your Committee that some measure of relief is almost imperative. We believe that the present situation makes it exceedingly difficult, if not impossible, to secure a prompt and efficient administration of justice. It is unfair and burdensome to the judges and other officials of Courts, and unjust to the citizens who have business before the Courts and who are entitled to have their cases speedily heard and fairly considered.

In view of the fact that each division of the two existing districts is not represented on your Committee, we deem it unwise and inexpedient for this Committee or the Association, at this time, to attempt to arrive at any conclusion, with reference to the proper adjustment of district or divisional boundary lines in the event of the creation of a new district.

*We therefore recommend*

(1) That the Georgia Bar Association recognize the imperative need of relief for our Federal Courts and Judges and that the President of the Association and the executive Committee be authorized to urge the enactment of the legislation necessary to create an additional Federal Judicial District in Georgia, and that they be authorized especially to communicate the action of the Association, upon this report, to the members of the House of Representatives and Senators from Georgia and to the attorney general of the United States.

(2) We further recommend that the President of this Association be authorized, in the event he considers it needful or desirable, to appoint a representative Committee or

Committees, whose duty it shall be to make a further survey of conditions and report back to the President their recommendations for the apportionment of Courts among the three proposed districts and for the adjustment of the divisions thereof so as to fairly distribute the business of the Courts.

Your Committee further reports that it is impressed with the fact that under recent statutes the Federal Courts are called upon to try and dispose of a vast number of petty criminal cases, beneath the dignity of the District Courts as now constituted. We believe that the district judges should be relieved of the trial of such cases.

We therefore recommend that legislation be enacted authorizing the trial and disposition of petty criminal cases by Commissioners or some inferior tribunal created for that purpose, so that the trained and experienced District Judges may devote their time and energies to matters of real importance requiring skill and learning.

The report is submitted by the Chairman and Mr. Orville A. Park for the Committee.

Mr. John M. Slaton, of Atlanta: I have listened with a great deal of interest to the report of the Committee. In many of the features of the report I am prepared to concur, but there ought to be a division of the question in some respects. That part of the report which states that the Federal Courts are literally congested by the burden of small miscellaneous business, to my mind accounts for the situation. The large part of the burden of the Federal Courts is the disposition of cases for violation of the prohibition law. Those offenses are punishable by the State Courts and then punishable by the Federal Courts. Practically, but not entirely, they are the only offenses that are to be punished twice—by the State Courts and Federal Courts. Not long ago in Atlanta Judge Sheppard of Florida presided, and a man came before him charged with a violation of the prohibition law. When imposing penalty, the man said "I have been convicted and punished already in the State Courts", and Judge Sheppard expressed himself as

surprised. He said in Florida no such system would be permitted; when convicted in Florida and punished by the State Court, he is not tried, convicted, and again punished for the same offense by the Federal Court.

It seems to me that there is no reason why lawyers, who represent the conservatism of the State, as opposed to hysteria, should lend themselves to that double punishment imposed for a single offense.

Now, I observe in the Northern District of Georgia, where there is comparatively heavy litigation, that the Judge's time is taken up to a very small extent with the disposition of civil cases. They are comparatively few. I presume to a greater or lesser extent that is the case in the Southern District of Georgia. Therefore, why should it be necessary to create a third Judicial District, unless the idea is to give an invitation to have these cases prosecuted in both Courts, and invite a multiplication of the cases? Not long ago I saw in the New York Times where they were asking for the City of New York alone ten run courts. In the City of Atlanta the Recorder disposes of forty to fifty thousand cases a year. Practically every one of those may be a State case. Two men pass each other on the street, and their abusive language may be such as to cause a breach of the peace, and that would be a violation of the State law; but the Recorder disposes of that case. And those cases might be multiplied. Think of it, arraigned on solemn charges by the court with all formality, and a jury empaneled—why, it would be impossible for twenty judges to dispose of those cases. Are you going to invite a multiplication of these cases in the United States Courts before these District Judges? Just as the report of the Committee says in superb language, intelligently expressed, you ought to have some sort of system, by which these matters can be disposed of by inferior tribunals. I think the District Court of the United States ought to dispose of great Federal and Constitutional questions.

Judge A. W. Cozart, of Columbus, interrupting: I don't want to interrupt the gentleman, but I want to call his attention to the fact that his remarks are out of order. That is a question which affects the whole United States, and the remarks of the gentleman apply to the whole United States, and would not be in order under this resolution. What we want to do is to dispose of this particular resolution. If he wants to amend it, he can do that, but otherwise his remarks are out of order. I am of course glad to hear from him, but I think there is a parliamentary question involved, and he is the best of parliamentarians, and everything else, for that matter. I think he is out of order, and I raise that point.

The President: The chair has not applied the strict rules of order in this connection. However, there is no motion before the house, and nothing for discussion.

Mr. Slaton: I recognize at once that the chair is correct. There is no motion before the house, but this report has been read, and, if it be regarded as before the body, then I suggest I would be in order. However, I yielded for a motion to be made.

Judge Cozart: I move to amend the report—this may not be in the best of language—I move to amend section 1 by striking out the recommendation to provide an additional district, and substituting in lieu thereof a recommendation to provide an additional judge to assist the Northern and Southern District Judges. I make that motion, and at the proper time I want to say one word on it.

The motion was seconded.

Mr. Slaton: I now submit that, unless there is a motion made which would bring the matter before the house to be discussed in its entirety, what I have to say would not be in order, but, considering this report as before us for discussion, I will complete what I started out to say. To show the dignity of the United States Courts, there is a provision that no suit can be brought between citizens of different

States unless the amount involved is \$3,000.00. That means that the United States Court shall not be dealing with trivial matters. Now, are we to put ourselves on record in the State of Georgia that we want more judges in order to dispose of petty misdemeanors? If a darkey happens to steal a sack of flour in interstate commerce, that becomes subject matter for trial before a United States Judge. If a man has a quart of liquor in his possession, that goes before a United States Judge. I might multiply these instances of misdemeanors. Why is not the suggestion a correct one to appoint inferior tribunals to try these cases, and not create a new Court with all the powers and the formality of a United States Judge, who should only consider these great Constitutional and Federal questions?

Why should we multiply all of these cases, and invite a multiplication of them, by saying we are going to provide the judges to dispose of them? The last time I talked to Judge Newman, a gentleman whom we all loved and who was the embodiment of all that is best in the judiciary, he said there came before him a case in one of the cities where he presided, where a State judge fined an offender \$800.00, and "when it came before me, I fined him \$25.00". If you knew the circumstances of the case, there is not a member of the Bar Association, that would not have applauded the leniency and the humane consideration he showed.

Judge A. W. Cozart, of Columbus: Why not move to strike that part of the report?

Mr. Slaton: You are dealing with a general remedy, and that's all right. When you come to recommending a remedy, be careful that you get what you are after, but do not put upon us this situation, the creation of a new District or the appointment a new Judge to try petty cases against which the large majority of the Association stands.

Mr. R. J. Travis, of Savannah: If the creation of a new district or the appointment of a new judge would invite a multiplication of these cases, would not the creation of

inferior courts to try these cases also invite a multiplication of them?

Mr. Slaton: I would like to have it like the court of the Recorder of Atlanta who fines a man five or ten dollars and that ends it. I don't want the court burdened with all these petty cases.

I want to say another thing. We all know the burdens of taxes, how they multiply. People are constantly referring to this, to what they do on the continent, in Germany and France, and in England. You have got the constant pressure of government on you. We are getting to thinking that the government is not efficient unless we feel the pressure upon us. Whenever you pass an appropriation, whenever you increase the burden, you and I have got to bear it. When we do increase it unnecessarily, we have no reason to complain. If we cause the increase of expense anywhere, we increase our burden. We say "here's a pork barrel: we are going to get so much out of it; let Georgia get her part". That's multiplied in every community in the United States. We are multiplying these expenses unnecessarily, and particularly is this suggestion given great force when we consider multiplying Federal Courts to deal with petty misdemeanors.

I think the lawyers ought to set an example and say there is no need for the creation of all these things, but adopt a system that will relieve the situation at the least expense. We have Judges of the Northern and Southern Districts of Georgia representing the best of the bar. We have heard to-day a gentleman, a member of the Circuit Court of Appeals, who represents the very embodiment of law, and in whose judgement we have the utmost confidence. Let them have the chance to solve those great Federal and constitutional questions, and not make their courts recorder's courts to try misdemeanors, that ought to be disposed of in petty criminal courts. (Applause.)

The President: The Committee has made two recommendations—one a division of the State into three districts

and the appointment of an additional district judge; the other is the relief of the courts from petty cases. There is also the question of an endorsement of a concurrent resolution pending in Congress, by which there will be referred to a joint commission such legislation relating to the Courts of the United States, the procedure therein, and the judges thereof, as would tend to improve the administration of justice, such Commission to report to the Congress a bill to carry the recommendations of that joint commission into effect. That includes the question that Governor Slaton has just been discussing. The Chair also calls attention to a motion made as a substitute for one of the recommendations of the Committee that an additional Judge be appointed without the creation of an additional District.

Is there a motion before the House to adopt the report of the Committee?

Several Voices: No, there is not.

Judge A. W. Cozart, of Columbus: There is in effect a motion to adopt the report, as it was presented before the body, and this body has been discussing the report. I offered an amendment to the report, which was seconded, on the idea that the report as a whole was before the body. Strictly in a parliamentary sense however there is no formal motion before the house to adopt the report.

The President: The chair has allowed the discussion to proceed, even though strictly speaking there is no formal motion before the House.

Mr. H. H. Swift, of Columbus: As a substitute for the resolution offered by Judge Cozart, I move that the President appoint a Committee of one from each Congressional District in the State to consider this entire matter—to consider whether a third judicial district should be created, or whether the measure of relief sought could be obtained by appointment of a third Federal Judge, and also to consider the third proposition as to inferior judicial bodies to consider these petty cases which have been under discussion.

This motion was seconded.

Judge Cozart: You see the last question is a national question. We democrats down here don't amount to much with a national question. Brother Slaton need not worry; we are not going to have all of these little courts. We are wasting time discussing it.

Mr. Slaton, interrupting: Does the gentleman think that the State Bar Association of Georgia, because this is a national question, should make no suggestions?

Judge Cozart: The National Congress will pay no attention to suggestions as to national improvement of the judicial system, but the particularly serious question before us is the relief of the Federal Courts of Georgia and the best way to do it. To conduct a civil court you only need a near clerk, a bailiff, and a good judge. (Laughter.) We can have only what we can get, and what we want is to propose a feasible remedy, and one we can get. If you go to talking about having a great retinue of officers, and a third district, that's all right, if you can get a man who is not an autocrat or a fool. We have got the two best judges in the United States now. (Applause.) We have got two of the best judges in the world. That being so, we need relief for them, and we can get it with very little expense by having an additional judge to help those judges. We can't have another district without having large expense, and a Republican Congress is not going to give it to Georgia, if it takes any amount of money. We might as well meet the issue and act with common sense. You are not going to get another district, and you are wasting your breath, when you undertake it. You can get an additional judge and get great assistance to help these two great and good men we have now.

Judge Chas. L. Bartlett, of Macon: What sort of a judge?

Judge Cozart, of Columbus: Well, we'll take our chances on that. I don't want to be confined to the proposition of the establishment of another district, which at best is an unknown quantity. We are satisfied with what

we have got; we are satisfied with the judges we have got; but we don't want to kill them, as I understand we are doing, by overwork. I may be a humorist, Mr. President, but I am talking sense now, and you are going to live long enough, everyone of you, to realize that I am telling you the truth. I would be for the matter to be referred to a committee of one from each Congressional District, but I tell you, Mr. President, that I know more about the Republicans than most of you. I was born in East Tennessee where they have the meanest Republicans and the best Democrats in the world. You can probably get what you want, if you show them a necessity where there is very little expense. Some of them have got some heart, and many of them got some sense, but they don't love the South well enough to shove out money these tight times to create another district.

Mr. F. M. Oliver, of Savannah: There is a movement organized in the United States that is responsible for this resolution now pending before Congress:

*Resolved:* By the senate of the United States (the House concurring), That a joint commission is hereby created, which shall consist of six senators to be appointed by the President of the Senate and six representatives to be appointed by the Speaker of the House, to consider such legislation in relation to the Courts of the United States, the procedure therein, and the judges thereof, as would tend to improve the administration of justice, and to report to the Congress a Bill to carry the recommendation of the joint commission into effect.

This movement consists of a committee of lawyers representing all States and sections of the United States, most of them ex-Presidents or men who have served on the Executive Committee of the American Bar Association. This committee has met in Washington twice. They have conferred with the Judiciary Committee and the Rules Committee of the House, and it is as a result of this meeting and conference that this resolution has been prepared and

has been introduced in the Senate and in the House of Representatives.

Now I submit that the question we are now considering, as to whether we should adopt the report of the Committee on Federal legislation, or whether this matter should be submitted to a Committee composed of one member from each Congressional District, brings up a question generally of national importance, and I beg to dissent from the position that Judge Cozart has taken, that we in Georgia are not going to get recognition from a Republican Congress or President simply because it means the expenditure of cash in a Democratic State. I think he is mistaken. If it were purely a political question, there might be some foundation for such a view, but the proposition is not one of politics. It is one of the nation wide administration of justice. The condition that prevails in the State of Georgia as to the overcrowded dockets of the Federal Courts is not peculiar to Georgia, but it is the prevailing condition in all the States of the Union. When Congress submitted to the people the 18th amendment, which said that intoxicating liquor should not be used as beverage, they put in the supreme law of the land, a law that this nation has either got to enforce or acknowledge as a mistake, and the Volstead law has been enacted as a means of enforcing that constitutional amendment. As the result of that constitutional amendment and the Volstead law, the great City of New York has hundreds and thousands of cases the Federal Courts cannot try. The same situation exists in Philadelphia, Chicago, Denver, and elsewhere; it is nation-wide.

Therefore, it is not alone for us to consider that we want a new Federal District or judge to help administer this law. The same subject is being considered by every Bar Association and every State of this Union and this matter is going to be the subject matter for enactment of legislation in Congress after the entire question is considered.

Our Senator has a bill now in Congress for the creation of a new Judicial District. I submit that similar bills have

been submitted from New York, Pennsylvania, and a lot of other States wanting new judges and districts, and they are not going to get these unless Congress enacts a statute to take care of the whole thing. They are not going to give Georgia a new judge to try these Volstead cases unless they at the same time consider Pennsylvania, Michigan, or Colorado, or California.

Therefore, it is quite wise that we adopt the resolution that a Committee of one from each Congressional District shall take this matter under consideration with power to act.

Not only is the question of the enforcement of the Volstead law of vital importance, but there are conditions concerning some of the duties of the Federal Judiciary that are archaic. For instance, the Judge must certify the items of expense that the marshal passes on, and we all know that really makes the examination by him of the marshal's account perfunctory.

There is a provision that, when a judge thinks a man is entitled to leniency, according to a decision of the United States Supreme Court he has no power—

Judge A. W. Cozart, of Columbus interrupting: That ruling of the Attorney-General has been rescinded. That's not the law now.

Mr. Oliver, continuing: The Attorney-General cannot rescind decisions of a court. Whether that is the law or not, some judges take the view of poor humble servant.

Another thing that makes it necessary for all of this matter to be considered not alone for Georgia, but as a nation-wide matter, is this question of the Volstead Act—whether you are going to have a new court or just a new judge to help. I submit there is a great deal of thought to be given to this proposition. If you are going to have an inferior judiciary, as I understand Governor Slaton to advocate, you have got to have the same sort of organization.

Mr. John M. Slaton, of Atlanta: May I ask a question?

Mr. Oliver: Yes, sir.

Mr. Slaton: He says this calls for a great deal of thought. I agree with that. Does the gentleman therefore think that at this late hour we ought to dispose of this matter at this time without further consideration, or does he think that the motion of Mr. Swift is the correct one, that a Committee of gentlemen, one from each Congressional District, should take it under consideration?

The President: The Chair would suggest that each speaker be as brief as possible, as I see some sitting on the edges of their chairs.

Mr. Oliver: I think Mr. Swift's motion is all right, and anyone who agrees with him may vote that way.

Now, I will not trespass further upon your time, but this is the question: Whether, if you do not have a new district, but you appoint a new judge, you do not impose the same responsibility and the same routine as you do with a new district. I say that because, if I am correctly informed (and I believe I am), the Supreme Court has held that if a man can be tried for violation of a law or statute of the United States, he is entitled to a trial by jury. If he is entitled to trial by jury, he is entitled to trial by twelve, and, if you have got to have a jury of twelve, you have got to have as good men for your so-called "inferior judiciary"; and, if you are going to have them, then give us new districts, in order that there may be no classification of crime, and in order that one crime may be tried with just as fair a consideration of the law as any other crime.

The President: The only motion is to refer this to a Committee of one from each Congressional District. Now it is true that that necessarily opens a wide field for discussion, but the chair appeals to those who do discuss it not to stray too far afield from that simple question. Can we dispose of it in this meeting or shall we refer it to a Committee?

Mr. W. W. Gordon, of Savannah: Was that with power to act?

Mr. H. H. Swift, of Columbus: If that was not clear, I will reduce the resolution to writing.

Mr. J. R. Phillips, of Louisville: I rise to a point of order: A motion to refer to a committee is not debatable.

The President: The point of order is not well taken.

Mr. Orville A. Park, of Macon: I think before any radical action of any kind is taken on this matter we ought to get some understanding of the real condition of the Federal Courts in this State as compared with other States. Possibly when we know this condition, we will be in position to act advisedly as well as promptly. I requested the Assistant District Attorney to get from the reports of the Attorney-General some comparative statements of the business in the different States and districts. In view of these figures, I am sure nobody can object to giving some relief.

Judge A. W. Cozart, of Columbus: Why not refer that to this Committee?

Mr. Park: I intend to do that.

The President: No opposition with reference to this Committee has developed apparently. So far as can be said now, the membership is a unit for referring this matter to a Committee. I would suggest that debate be limited in the interest of time.

Mr. M. J. Yeomans, of Dawson: I move that the debate on this question be limited to ten minutes on both sides.

This motion was seconded and carried.

Mr. Park: I am not going to take up any time or debate the question.

Mr. R. J. Travis, of Savannah: If he is not going to take up any time or debate the question, what is he going to do?

Mr. W. W. Gordon, of Savannah: I move the previous question.

Mr. Park: I have the floor, and I am not going to yield to any other interruptions. I insist on giving this information.

With the assistance of the District Attorney's office, I

have collected some data relative to the congestion of the dockets of the United States Courts in Georgia and some comparison with the conditions existing in other states.

I have some data showing a comparison of the work in Georgia with the work in those states which have three or more districts. The data referred to is based on the annual report of the Attorney General for the year 1920. It shows that Georgia had pending at the close of the last fiscal year approximately fifty per cent more cases than were pending in the four districts of Texas, four times as many as in the three districts of Tennessee, fifty per cent more than in the three districts of Illinois, six times as many as in the four divisions of Alaska, and three times as many as in the three districts of Alabama.

During that year there were commenced in Georgia almost as many cases as in the four districts of Texas, two and a half times as many as in the three districts of Tennessee, approximately fifty per cent more than in the three districts of Illinois almost five times as many as in the divisions of Alaska, and almost twice as many as in the three districts of Alabama.

During the year there were terminated in Georgia almost as many cases as in the four districts of Texas, twice as many as in the three districts of Pennsylvania, four hundred more than in the three districts of Illinois, nearly four times as many as in the four divisions of Alaska, and twice as many as in the three districts of Alabama.

For the same period there were approximately four times as many jury trials in Georgia as in the four districts of Tennessee, nearly four times as many as in the three districts of Pennsylvania, more than twice as many as in the four districts of New York, five times as many as in the four divisions of Alaska, and three times as many as in the three districts of Alabama.

There were also more pleas of guilty in Georgia than in Pennsylvania, nearly three times as many as in Tennessee, about the same number as in Illinois, about twenty times as

many as in Alaska and more than twice as many as in Alabama.

The only states in the Union in which the volume of business pending and transacted in Federal Courts exceeds Georgia, are Pennsylvania and New York. The Northern District of New York has two judges, the Southern District four, the Eastern District two, and the Western District one—a total of nine in this one state. The Eastern District of Pennsylvania has two judges, the Middle District one, the Western District two—making the total for Pennsylvania of five.

I have also some data for a comparison between Georgia and the other states in which there are two districts.

Without undertaking to go into detail, it is enough to say that there were 1970 cases terminated in Georgia during the last fiscal year. This is more than four times as many as in Arkansas, practically the same as in California, more than twice as many as in Florida, about four times as many as in Iowa, nearly twice as many as in Kentucky, nearly three times as many as in Louisiana, more than twice as many as in Michigan, about four times as many as in Mississippi, nearly twice as many as in Missouri, about seventy-five per cent more than in North Carolina, slightly more than in Ohio, about the same as in Oklahoma, more than twice as many as in South Carolina, about seventy-five per cent more than in Virginia, more than twice as many as in Washington and West Virginia, and nearly three times as many as in Wisconsin.

Illustrating the present congestion, this data is also illuminating. There were pending at the close of the fiscal year in Georgia 3398 cases—more than six times as many as in Arkansas, two and a half times as many as in Florida, nearly seven times as many as in Iowa, nearly three times as many as in Kentucky, three and a half times as many as in Louisiana, more than five times as many as in Michigan, more than six times as many as in Mississippi, more than four times as many as in Missouri, more than twice as many

as in North Carolina and Ohio, nearly twice as many as in Oklahoma, four and a half times as many as in South Carolina, three and a half times as many as in Virginia, more than four times as many as in Washington, nearly five times as many as in West Virginia, and fully five times as many as in Wisconsin.

The sentiment seems to be overwhelmingly in favor of some relief, but there is difference of opinion as to the relief should be sought. Some of us seem to think that the conditions in Georgia are the same as in other states. These comparisons indicate very clearly that this is not true, and therefore any general relief applicable to the whole country—such as authorizing commissioners to try petty criminal cases—would still not meet the situation in Georgia. At least this would still leave the Georgia Judges very much harder worked than judges in the other states. While I am heartily in favor of the creation of some inferior tribunal to try and dispose of petty criminal cases, I do not think it would be wise for the effort to be directed to this end. It will doubtless take a long time to get a law of this character enacted, as the condition throughout the entire country would have to be taken into consideration, and no doubt considerable opposition would be met in the effect to secure such legislation.

I am advised that the report of the Attorney General for the current year ending June 30th will show a very much larger accumulation of business in the two Georgia districts than did the report of last year, and at the same time, that there have been disposed of, in various ways in both districts, largely more cases than in the previous year.

It seems to me that with these facts the case for Georgia is made out. In justice to the state, of the Judges now in office, and to the business of the government, some relief must be afforded. I do not believe this relief can be furnished satisfactorily by the addition of a new Judge who would divide his time between the two districts. Both districts are so over-crowded that it would be very hard for one

Judge, dividing his time between the two, to be just to both. Besides, the District Attorney's offices and those of the Marshals cannot keep up with the business nearly so well as they could if the state were divided into three districts and a new District Attorney and Marshal appointed. It is very hard to prepare business or to dispatch it properly when there is uncertainty about the holding of the court, and this would necessarily be the case if there were a Judge dividing his time between the two present districts.

Mr. W. W. Gordon, of Savannah: I move the previous question.

Mr. D. G. Fogarty, of Augusta: An entirely uncontradicted recommendation of the Committee should be adopted, and that is as to the recommendation to create a joint commission from the House and Senate to consider general measures for the relief of the United States Courts. That ought to be done, and, if the gentleman would withdraw his motion for a moment, I would amend Mr. Swift's motion by dividing the motion, and agreeing to that part of the report of the Committee.

Mr. R. J. Travis, of Savannah: You have no resolution before the house to adopt this report at all. Would it not be well to have a motion first to adopt the report, so as to get it before the house?

The President: For the purpose of making the written record clear, the point is well taken.

Mr. Travis: The previous question is moved. If carried, what are you going to vote upon? I would like to offer a resolution that the original recommendations of the Committee be adopted.

This was seconded.

The President: The written record is now clear.

Mr. Geo. W. Owens, of Savannah: I move that this section of the report which suggests that cases be tried by United States Commissioners and that they be authorized to impose sentences be eliminated. They practically cor-

respond to justices of the peace and I think it is wrong to vest them with the authority to impose sentences

Mr. Gordon: I move now the previous question.

The call for the previous question was sustained.

The President: The members will vote on the motion of Mr. Swift as a substitute, that this whole subject be referred to a Committee consisting of one from each Congressional District, to be appointed by the President, who shall take the whole matter under consideration with power to act; and also that the resolution, endorsing the pending concurrent resolution in the Senate for the appointment of a joint Commission from the Senate and House to consider the whole matter, be approved by this Association.

This was then voted upon and carried.\*

Mr. A. Pratt Adams, of Savannah: Following Mr. Swift's motion, I now move that it be the sense of this meeting that some form of relief be adopted. We are not in a position to determine what it should be, but I move that it be the sense of this Association that relief is needed.

This motion was seconded and carried.

Judge Robt. L. Hardeman, of Louisville: The motion has been carried for the appointment of this Committee. I move that the incoming President have the power to appoint a sub-committee to draft the findings of this Committee of twelve, and communicate the same to the Committee of the House of Representatives.

Mr. D. G. Fogarty, of Augusta: It is entirely competent for this Committee to formulate its own report.

The motion was not seconded and was not put to vote.

Judge A. W. Cozart, of Columbus: I move we adjourn.

The President: The chair trusts you will permit him

---

\*The Committee was appointed by President Arthur G. Powell on June 9, 1921, as follows: H. H. Swift, Chairman, Columbus; C. G. Edwards, Savannah; Sam S. Bennet, Albany; M. J. Yeomans, Dawson; Luther Z. Rosser, Atlanta; C. L. Bartlett, Macon; Barry Wright, Rome; Albert G. Foster, Madison; W. A. Charters, Gainesville; John T. West, Thomson; John W. Bennett, Waycross; A. S. Bradley Swainsboro.

to take one moment more to do what he has not done yet—to express his high appreciation of the honor you conferred upon him in electing him President of the Association, and particularly the consideration with which you have treated him. Is Judge Powell in the hall?

Judge A. G. Powell, of Atlanta: Yes sir.

The President: Please come forward.

Judge Powell, President-elect, came forward.

The President: Permit me to introduce to you a hitherto unknown, Judge Arthur G. Powell, President of the Georgia Bar Association. (Applause.)

Judge Powell: Mr. President, Ladies and Gentlemen: I understand that the rule has been that a member of the Association who happens to be elected President is supposed to keep silent for the rest of the time. One of the things, doubtless, that aided my election, was the hope that I would keep silent.

I especially appreciate the fact of my election on account of the manner in which it has come. I have for several years been trying to ingratiate myself with what is known as the "ring" or rulers of this Association. You remember that on one occasion a certain animal put a lion's skin over himself. I am glad to know, nevertheless, that my ears struck out sufficiently for my friends, Franklin and Yeomans, to recognize that I still belonged to their crowd of "roughnecks." (Laughter.)

When the Chairman of the Nominating Committee yesterday began to make his preliminary remarks, and when he said it was the sense of the Committee that a countryman should be elected, and that they had chosen a most typical countryman, one who came from the country, and was still a countryman, and in the opinion of the Committee, would always be a countryman, I said to my wife, "You'll be the first lady of the Executive Mansion of the Bar Association next year." (Laughter.) In fact I some-

times feel that it is probably not due to my association with both the "ring" and the "roughnecks", but that my election is due to the company I have always brought with me to this Association. With the exception of one year, when illness in my family prevented, I have always brought with me all of my wives and some of my daughters. In fact I see now a gentleman in this body, who has brought with him three very charming daughters, and I predict that he is certainly in line for election to the Presidency of this body. I understand he has five more at home. His daughters evidently take after the mother, and she must be a beautiful woman. So I don't believe my election is due to my connection with either the "ring" or the "roughnecks", but due to the fact that I have been trying to bring charming company with me to the Association.

Now, it is customary for the incoming President to express his gratitude at being elected President. To be truthful about it, I really do enjoy being elected President of this body. At different times I have had honors of a greater or less degree thrust upon me, some of which I deserved and most of which I did not, but I have always wanted to be President of the Georgia Bar Association, and you have elected a man who really deeply, in his heart, appreciates it, and I am sure my family appreciate it. We have been very closely attached to the Association, not only officially but personally. It has always been my pleasure to be of any service I could at any time, and at the present and in the future this is and will still be my attitude. I want to thank each and everyone of you for having elected me to this position. I only hope that I can in some small way measure up the honor you have thrust upon me. I can promise every member of this Association, whether he belongs to the "roughnecks" or the "ring", whether he is a member of the "old guard" or the "new guard", be he young or old, that I want to treat him absolutely fairly as my friend, and as having equal rights with every other

member, not only on the floor, but in all of the activities of the Association.

I hope that next year we will all be back here, and that we will have many new ones with us, and I trust that we will have a meeting which at least in a measure will approach the very excellent meeting that is now adjourning. (Applause.)

The President: We have at the Savannah Bar a very splendid young lawyer; and when I say that I mean that he is a very fine man and that he is very much beloved and liked by all. He had a friend who came down from his old home in the country a short while ago. This friend was looking for him, and went out to the golf links to wait for him. The friend was standing there, watching them come in on the eighteenth hole, and, as he looked up and saw our lawyer, he said: "Who is that I see coming here? Why, that's John Kennedy. What! With those stockings on, and those short trousers? My God, there's another Cracker gone wrong." (Laughter).

It is now my pleasure to yield to "another Cracker gone wrong." I declare the thirty-eighth annual session of this Association now adjourned.

# APPENDIX



# JUDICIAL CONTROVERSIES ON FEDERAL APPELLATE JURISDICTION.

ADDRESS OF THE PRESIDENT,  
ALEXANDER R. LAWTON,  
OF SAVANNAH.\*

---

Seven years ago at the beginning of the World War; in greater degree four years ago when we wearied of having others fight our battles for us and began to save ourselves; and in still greater degree since the Armistice came, adding the problems of peace and readjustment to those of war; we were and are fond of saying that these are troublous times and that the problems of today are the most serious that have yet confronted us. When we do so we forget the hardships and the struggles and the uncertainties confronting our ancestors from the days of the settlement of Jamestown and Plymouth, and steadily getting more easy of solution as the years rolled on. In this paper we consider no period earlier than the close of the Revolution, being concerned only with the great problems of the creation of this Republic and its establishment and maintenance on a foundation which should endure for all time as a model for all the earth. Our forbears did not shrink from the task, and it is accomplished.

We of today have a Government which has successfully weathered four years of a bloody Civil War, and you will agree that the conflicts which I shall today bring to your at-

\*Greatly abbreviated for oral delivery. For authorities cited *vid. post* p. 137.

tention clearly demonstrate that before that war was fought there was no well cemented Union, and that today there is more justification than at any earlier period for the hope that our Union will endure forever, with no greater discord than may naturally be expected in a family of fifty children of all ages, sizes and temperaments.

We have a good Government and our problem is how to keep it.

Four generations ago our great-great-grandfathers had no Government—the Confederation had proved inadequate—and their problem was how to make one. The answer to it was the Constitution of the United States, effective March 4, 1789, and that marvelous structure is today the answer to our own problem of keeping it. I am of those who do not believe that the problems of today must be solved by bloody strife, but if this needs be, we must be prepared to suffer even this to preserve a Constitution with an unsurpassed record of adaptability to all the problems of government, whatever their nature, however they may arise.

In the Constitutional Convention of 1787 it was surprising to find Georgia, sparsely populated, favoring proportionate representation in the House of Representatives as against equal representation for each state, but her attitude is explained by the vast extent of her territory and the vision of her delegates who foresaw that ultimately this would bring to her greater influence in the councils of the nation. She was dissatisfied with the articles of Confederation, and she was so favorable to the new constitution that she is said to have appointed her delegates before the formal submission of the request. The draft of the constitution submitted by Congress did not reach Georgia until October 13, 1787. Election for delegates was ordered on October 26; the Convention met in Augusta on December 28, and on January 2, 1788, unanimously ratified the

<sup>1</sup> McMaster I., 291.

constitution as submitted and without amendment. The distance from Philadelphia (where Congress and the Constitutional Convention sat) to Georgia was greater than that to any other state and the farther the messenger travelled the more difficult it was. Notwithstanding this, the only states who filed their ratifications ahead of Georgia were Delaware, Pennsylvania and New Jersey—the state in which the two Federal bodies sat and two adjoining states within easy access. Most of the states transmitted advice of their ratification in purely formal documents, but John Wreath, President of the Georgia Convention, added the hope that the prompt compliance of his state “will tend not only to consolidate the Union but promote the happiness of our common country.”<sup>1</sup>

Georgia was distinctly a Federalist state, loyal to her own sovereignty, but equally loyal to the Federal Government in those matters committed to its control. But, by what she deemed to be an unwarranted usurpation of power and serious attack upon her dignity, the peaceful atmosphere was soon converted into stormy weather. A non-resident of Georgia sought to bring the Sovereign State before the bar of the Supreme Court of the United States as a defendant in an action of assumpsit.

All suits by individuals against states were finally stricken from the docket by the decision in *Hollingsworth v. Virginia*<sup>2</sup> at the February Term, 1798, holding that the adoption of the Eleventh Amendment deprived the Court of jurisdiction, not only of all future cases, but of those pending before the amendment was proposed. Up to that time, so far as the meagre reports show, there had been six efforts to assert the constitutional right of the Supreme Court to entertain jurisdiction in a suit against a state by a citizen of another state. Of these Georgia's case alone proceeded to judgment and was apparently the only one strongly

<sup>1</sup> Doc. Hist. Const. II., 65.

<sup>2</sup> 3 Dallas 378.

resisted.<sup>1</sup>

The youngest of the thirteen colonies appears on the earliest dockets of the Supreme Court with a frequency out of all proportion to her importance, and figures conspicuously in the early development of the important problems of that court.

1. The first case in which opinions are reported was a case in which Georgia was plaintiff.<sup>2</sup> 2. The second report of opinions is on a motion in this same case.<sup>3</sup> 3. The third case in which opinions are reported is the conspicuous case of *Chisholm v. Georgia*.<sup>4</sup> 4. This was also the first case in which opinions were delivered and judgment rendered on a construction of the constitution and on the jurisdiction of the court. 5. The first case in which a jury was empanelled in the Supreme Court was a case in which Georgia was plaintiff, heard in 1794 on the merits.<sup>5</sup> 6. The first final judgment rendered in the court was the judgment on this jury verdict.<sup>6</sup> 7. The first time that any justice discussed the right to hold a state law unconstitutional (he was inclined to recognize

<sup>1</sup> *Van Stophurst v. Maryland*, 2 Dallas 401 (in which Maryland apparently did not resist jurisdiction); *Oswald v. New York*, 2 Dallas 401, 402, 415; *Chisholm v. Georgia*, 2 Dallas 419 (to be further noticed); *Grayson v. Virginia*, 3 Dallas 320; *Huger v. South Carolina*, 3 Dallas 339; and *Hollingsworth v. Virginia*, 3 Dallas 378: two cases against Virginia, and one each against Georgia, Maryland, New York and South Carolina.

McMaster (III, 127) mentions another case—*Moultrie v. Georgia*—but Dallas does not report it.

<sup>2</sup> *Georgia v. Brailsford*, 2 Dall. 402.

<sup>3</sup> Dall. 415.

<sup>4</sup> Dall. 419.

<sup>5</sup> *Georgia v. Brailsford*, 3 Dall. 1. The charge of the Chief Justice on the respective functions of court and jury is incomprehensible. See the comment of Mr. Justice Curtis on Circuit in 1851: "Chief Justice Jay is there reported to have said to a jury, that on questions of fact it is the province of the jury, on questions of law it is the province of the court, to decide. And, in the very next sentence, he informs them, they have the right to take upon themselves to determine the law as well as the fact. And he concludes with the statement, that both law and fact are lawfully within their power of decision. I cannot help feeling much doubt respecting the accuracy

the right) was in a Georgia case.<sup>1</sup>

Hampton L. Carson in his *Centennial History of the Supreme Court* (p. 219) says that the first case in which the statutes of a state repugnant to the constitution have been held to be void is *Fletcher v. Peck*,<sup>1</sup> which unanimously held that so far as it undertook to disturb rights vested in grantees under the Yazoo Sales and by them transferred to innocent holders, the Georgia statute repealing the Yazoo Grant was unconstitutional, null and void. But this ignores *United States v. Peters*<sup>2</sup> holding null and void a statute of Pennsylvania which declared the invalidity for want of jurisdiction of a judgment of the United States District Court in Pennsylvania, and instructed the Governor "by any further means and measures that he may deem necessary to protect the persons and properties" of the defendants from any process of the Federal Court.

of this report; not only because the different parts of the charge are in conflict with each other, but because I can scarcely believe that the Chief Justice held the opinion that, in civil cases, and this was a civil case, the jury had the right to decide the law. Indeed the whole case is an anomaly. It purports to be a trial by jury, in the Supreme Court of the United States, of certain issues out of chancery. And the Chief Justice begins by telling the jury that the facts are all agreed, and the only question is a matter of law, and upon that the whole court were agreed. If it be correctly reported, I can only say, it is not in accordance with the views of any other court, so far as I know, in this country or in England, and is certainly not in accordance with the course of the Supreme Court for many years. (*U.S. v. Morris*, 1 Curt. 23, Federal Cases No. 15,815).

<sup>1</sup> *Cooper v. Telfair*, 4 Dall. 1. The defendant was the same Edward Telfair, who as Governor of Georgia had previously so vigorously resisted the jurisdiction of the Supreme Court in *Chisholm v. Georgia*. Cooper was a colonist who sided with Great Britain in the Revolution. He was included by name in the Georgia statute of May 4, 1782, declaring certain citizens guilty of treason and confiscating their estates. He sued Telfair in the United States District Court upon a bond for 1,000 pounds given in 1774. Telfair pleaded the statute of confiscation for the use of the state, which Cooper claimed conflicted with the constitution of Georgia and that he was entitled to a trial. The court unanimously held that, except so far as expressly prohibited, legislative power included judicial and executive attributes and permitted punishment of citizens who had joined the enemy. In the *Brailsford* case (3 Dall. 1.) the plaintiff was a British subject and was protected by the treaty of peace which nullified confiscation of British property.

<sup>2</sup> 6 Cranch. 87. (1809).

<sup>3</sup> 5 Cranch. 115 (1809). This judgment was the culmination of

## CHISHOLM v. GEORGIA

One of the most important cases which ever came before the court is *Chisholm, Executor v. Georgia*<sup>1</sup>, in which a South Carolina plaintiff sought to sustain an action of *assumpsit* against the State of Georgia by original suit in the Supreme Court. Except for silence as to the nature of the claim, this case is very fully reported, occupying over sixty pages of the original report by Dallas, of which over fifty pages are given to the opinions; Iredell, J., dissenting (again the dissent is the first opinion given) and Blair, Wilson, Cushing, JJ., and Jay, C.J., concurring. It was held that Par. 1, Sec. 2, Art. 3 of the Constitution, extending the judicial power of the United States "to controversies \* \* \* between a state and citizens of another state," and Par. 2 of the same section providing that in cases "in which a state shall be a party, the Supreme Court shall have original jurisdiction", gave jurisdiction over a suit thirty years of litigation over the proceeds of a British prize captured in 1778 by mutineers and afterwards taken by a Pennsylvania armed brig. The Pennsylvania court of admiralty awarded to the mutineers only one-fourth and this decree was reversed by the Committee on Appeals established under the Articles of Confederation for admiralty causes. The court from which the appeal was taken held the reversal void because of a Pennsylvania statute requiring jury trial in the appellate court, and the Pennsylvania judge paid the money to Rittenhouse, Treasurer of Pennsylvania, who took a bond of indemnity and kept the funds out of the state treasury. Olmstead and others (the mutineers) later had judgment against Rittenhouse's executors in the United States District Court established under the constitution, but the District judge, Richard Peters, refused, because of the Pennsylvania statute, to enforce the process. The Federal Supreme Court held the Pennsylvania statute void as an attempt of a state legislature to conclusively determine the jurisdiction of a Federal Court, and issued a *mandamus* absolute to Judge Peters. Pennsylvania called out her militia to resist the marshal and the marshal summoned a posse of two thousand citizens. The upholding, however, of the Federal jurisdiction by President Madison composed the difficulty and avoided war. (Beveridge IV, 18-21).

This is not only the first case which I have found that nullifies the legislative act of a state, but is also the first case of judicial conflict. The Supreme Court of Pennsylvania in 1792 (*Ross v. Rittenhouse*, 2 Dall. 160) had, in an elaborate opinion, sustained Pennsylvania's claim that the Court of Appeals had no jurisdiction to reverse a judgment based on jury verdict except by itself empanelling another jury.

<sup>1</sup> 2 Dall. 419 (1792).

against a state by a citizen of another state. The decision was rendered on a motion by Edmund Randolph, then Attorney General of the United States, for a rule *nisi* for appearance by the State at the next term, or judgment by default and writ of inquiry of damages. This motion had been made at the previous term; "but, to avoid every appearance of precipitancy, and to give the State time to deliberate on the measures she ought to adopt, on motion of Mr. Randolph, it was ordered by the Court, that the consideration of this motion should be postponed to the present term. And now Ingersoll and Dallas presented to the Court a written remonstrance and protestation on behalf of the State, against the exercise of jurisdiction in the cause; but in consequence of positive instructions, they declined taking any part in arguing the question."

Apparently up to this time the Court had delivered its two opinions and given its judgment *extempore*, but now the case was "held under advisement by the Court from the 5th to the 18th of February, when they delivered their opinions *seriatim*." The order of the Court was that the plaintiff should file his declaration, which should be served on the Governor and the Attorney General of Georgia, and that in default of appearance and cause shown at the next term, judgment by default should be entered against the State. As the State did not appear, judgment was so rendered at the February Term 1794 and a writ of inquiry awarded. The decision immediately created great excitement among the sovereign states, so great apparently that the plaintiffs in the six cases brought against states did not undertake to brave the dangers and difficulties involved in efforts to enforce their claims. A footnote<sup>1</sup> shows that the writ was never sued out and executed. The case was swept from the docket by the decision in *Hollingsworth v. Virginia*<sup>2</sup> previously noticed.

<sup>1</sup> 2 Dall. 480.

<sup>2</sup> 3 Dall. 378.

Apparently the Georgia case was the only one in which argument was made or opinion was delivered, and undoubtedly it was Georgia's firm resistance inaugurated by Governor Telfair and continued by his successors which brought about the adoption of the Eleventh Amendment.<sup>1</sup>

Thus was Georgia's first, but not her only, conflict with the Supreme Court of the United States finally settled in her favor by peaceful methods. In the other controversies she was victorious only by insistence on herself determining, through her executive and her legislature, the constitutional questions involved, according to her own opinions and views, on disregarding the conflicting opinions of the Supreme Court and others, and on defying the United States to enforce the judgment of the court to which she objected. Unless stubborn resistance and successful defiance may be called settlement, these other controversies were not settled for more than two generations.

#### GEORGIA'S INDIAN PROBLEM

To understand the next conflict, we must know the material facts of Georgia's troubles with the Indians. Her territory extended from the Atlantic Ocean and the Savannah River to the Mississippi, but it was subject to whatever claims the Indians had, frequently referred to as the right of occupancy. The white man was actually settled in but a small portion of what is now Georgia. The Creeks and the Cherokees occupied and claimed jurisdiction and sovereignty over more than half the state, which may be roughly described as the western half, though it included almost all of the southern belt of counties and also

<sup>1</sup> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state." It is curious that the records of the State Department do not show that Georgia ever ratified the first ten amendments, and its publications do not show her ratification of the Eleventh Amendment—her own offspring. (Doc. Hist. Const. II pp. 390, 391-407.)

the northeastern counties.<sup>1</sup> In common with all other white races, Georgia took the white man's view; and in common with all other civilized peoples, Georgia took civilization's view of the Indian question and the savage question. The ethics of these questions do not come within the scope of this paper. What she claimed and what she sought to accomplish is no more, possibly no less, to be justified or condemned than similar claims and efforts of all ages incidental to the expansion of civilization and the gradual elimination of the savage from the land of his fathers. The difference between Georgia and her sister states who first formed the Union is that she was the youngest and the largest and had therefore accomplished less of this elimination than had the others.

Under statutes passed by Congress and by Georgia, James Madison, Albert Gallatin and Levi Lincoln, Commissioners on behalf of the United States (all members of Jefferson's Cabinet); and James Jackson, Abraham Baldwin and John Milledge on behalf of Georgia, signed at Washington April 24, 1802, "Articles of Agreement and Cession" \* \* \* "to make an amicable settlement of limits *between the two sovereignties*", whereby Georgia ceded to the United States "all the right, title and claim which said State has to the jurisdiction and soil" of all her lands south of the Tennessee and west of a line running up the "Chatahouchee" to the Great Bend and thence to Nickajack on the Tennessee, which is now the northwestern corner of Georgia. The consideration was the reimbursement of \$1,250,000 for expenses incurred, preservation of the rights of certain settlers, a covenant that, with certain exceptions, the ceded land should be considered as a common fund for the use and benefit of the United States, Georgia included; and also the further important consideration "*that the United States shall at their own expense extinguish for the use of Georgia, as early as the same can be peaceably obtained on reasonable terms, the Indian title*" to certain

<sup>1</sup> Phillips, Plate III, p. 92.

named lands of the Creeks, and "*to all the other lands within the State of Georgia.*" Delay, excusable or inexcusable, of the United States in effecting this extinguishment was the moving cause of the serious conflicts between Georgia on the one side and the Indians and the United States and her Courts on the other, which did not end for thirty-six years.

The United States ceded to Georgia all her claims to the jurisdiction and soil of the lands retained by Georgia.<sup>1</sup>

Georgia was constantly calling on the United States to extinguish the Indian titles, and I fear she was not materially concerned as to the ability of the United States to do it "peaceably" and "on reasonable terms". She wished the Indians to go. "Go west, red man, was the white man's *fiat*." The want of sympathy which she encountered at Washington until the administration of Andrew Jackson is history, but does not come within the scope of this paper. By 1826 satisfactory arrangements were made whereby the Creeks moved west of the Mississippi River and Georgia's jurisdiction and authority over their territory were definitely established.

#### LITIGATION WITH THE CHEROKEES

But it was the extinguishment of the title of the Cherokees in the northern part of the state that brought the serious trouble and the judicial conflicts in which we are now interested.

The Executive Department in Washington regarded and treated the Indian tribes as sovereign nations, and Presi-

<sup>1</sup> The Agreement was not to be enforced until ratified. Georgia ratified it by act of the General Assembly of June 16, 1802 (Clayton p. 48). McMaster (III, 131) tells us that Congress ratified it "by a strictly sectional vote." The opposition seems to be closely connected with the disputes growing out of the Yazoo Grant and its repeal, and the claims of innocent purchasers for value were defeated year after year in Congress through the efforts of John Randolph, until they finally established their title by the decision of the Supreme Court of the United States in the historically important case of *Fletcher v. Peck* ( 6 Cranch 87. 1810).

\* Bill Arp in *The Farm and the Fireside*, Atlanta, 1891.

dent Monroe received a delegation of the Cherokees in 1824 with diplomatic honors.<sup>1</sup> On July 26, 1827, the Cherokees adopted a national constitution<sup>2</sup> asserting that they constituted one of the sovereign and independent nations of the earth, with complete jurisdiction over its territory, *to the exclusion of the authority of any other State*, and establishing a representative system of government modeled on that of the United States.<sup>3</sup> That this increased the tension of the conflict is not surprising. For a while the United States had troops in the territory to protect it against Georgia's claims, and Judge Clayton of the Superior Court in his charge to the Grand Jury of Clarke County announced his intention of disregarding any interference by the United States Supreme Court. "I only require the aid of public opinion and the arm of the executive authority and no court on earth besides our own shall ever be troubled with this question."<sup>4</sup> Whether the cases of Cherokee Nation v. Georgia and Worcester v. Georgia ever "troubled" the Federal Supreme Court we know not, but certain it is that Georgia settled the question without regard to that Court. She even raised troops to offer armed resistance to a Federal administration which was in sympathy with the Indians.

The Cherokee Nation resorted to the court which Judge Clayton defied and William Wirt (then Attorney General of the United States) whom they retained as their counsel, proposed to Governor Gilmer, with whom he had enjoyed close personal relations, a friendly litigation to test the question. This letter and Governor Gilmer's indignant and somewhat intemperate refusal are set forth in full in his rare "Georgians" p. 347.

#### TASSELS AND GRAVES CASES

Meanwhile Georgia had, by Act of the Legislature in

<sup>1</sup> Phillips, p. 70.

<sup>2</sup> Phillips, p. 71.

<sup>3</sup> Phillips, p. 71.

<sup>4</sup> Phillips, p. 74.

1829, extended her jurisdiction over the Cherokee territory, and an Indian, George Tassels (also referred to as Corn Tassels) was indicted in the Superior Court of Hall County in 1830 for murder committed within Cherokee territory. The question of Georgia's jurisdiction was reserved for the Convention of Judges, which for so many years, partly by the voluntary act of the judges and partly under authority of law, was a substitute for a Supreme Court, not established until 1845. The opinion of the Convention of Judges<sup>1</sup> gives the apparently unanimous conclusion that the Cherokees were not a sovereign nation, and that the Georgia Act of 1829 annexing their territory was constitutional. Tassels took a writ of error to the Supreme Court of the United States under the Twenty-fifth Section of the Judiciary Act. When Governor Gilmer reported this to the General Assembly it promptly passed a resolution viewing this interference by the Chief Justice "with feelings of deepest regret," enjoining the Governor and others to disregard it, requiring the Governor "with all the force and means, placed at his command, by the constitution and laws of this State, to resist and repel, any and every invasion, from whatever quarter upon the administration of the criminal laws of this State"; and authorizing him to communicate the resolution to the Sheriff of Hall County "by express" with such orders as are necessary to insure "the full execution of the laws".<sup>2</sup> Georgia's only response to the writ was to hang the plaintiff in error.

In 1834 there was like action in the case of James Graves convicted of murder in Murray County. Here the report of the Committee is a little more elaborate, but the effect of the resolutions recommended and passed November 20, 1834, was the same<sup>3</sup>. Evidently the Governor availed himself of the request to communicate with the

<sup>1</sup> Dudley, 229.

<sup>2</sup> Ga., Laws, 1830, 282.

<sup>3</sup> Ga. Laws 1834, 337.

Sheriff by express. James Graves was hanged.

The first of these cases occurred under the administration of Governor Gilmer and the second under that of Governor Lumpkin, and the cases of Worcester and Butler, missionaries, (hereinafter noticed) spread over the administration of these two governors. They were politically hostile and personally unfriendly,<sup>1</sup> but in the treatment of these cases they were of one accord.

There seems to be no doubt of the guilt of the two defendants and Georgia did them no wrong. The only issue was a question of sovereignty and jurisdiction. Governor Gilmer tells us that all that the Indians demanded was that they should be permitted to put these men to death in their own way<sup>2</sup>. They were murderers and deserved no sympathy from us<sup>3</sup>.

#### CHEROKEE NATION v. GEORGIA

Intermediate between the cases of Tassels and Graves came the bill in equity filed by the Cherokee Nation on the original docket of the Supreme Court of the United States against the State of Georgia,<sup>4</sup> claiming that the Cherokee Nation was a foreign state within the meaning of the judicial article of the Constitution, and seeking to enjoin Georgia from the exercise of jurisdiction within

<sup>1</sup> Lumpkin, II, 300 *et seq.*

<sup>2</sup> Gilmer, 372.

<sup>3</sup> There is a story as to one of these cases that, when it was called in the Supreme Court of the United States, John McPherson Berrien formally "suggested the death" of the plaintiff in error. It is a pity to destroy such a gruesome piece of humor, but through the courtesy of the Clerk of the Supreme Court of the United States I learn that neither case appears in any way upon the records of that court; the writs of error being ignored, never reached the court. When the Supreme Court of Wisconsin, in a case which I will notice, prevented its Clerk from certifying the record under a similar writ of error, the Attorney General of the United States prevailed in a motion before the Supreme Court whereby the record was otherwise filed. The prompt and swift execution of the defendants in these Georgia cases made this course impossible.

<sup>4</sup> Cherokee Nation v. Georgia, 5 Peters 1, (1831).

the disputed territory<sup>1</sup>.

Georgia again declined to appear and the case was argued on one side only. The opinions delivered *seriatim* cover 66 pages, of which that of Chief Justice Marshall delivering the opinion of the Court is the shortest. Of course, he had before him but one side; only the allegations of the complaint unsupported by evidence and undenied; and his remark that "if the Courts were permitted to indulge their sympathies, a case better calculated to excite them could hardly be imagined" must be considered from this standpoint. Reading of the bill drawn by the master hand of William Wirt would seem to justify this. Marshall considers only the question of jurisdiction, and this in turn involved only the question whether the Cherokee Nation was a "foreign nation", for it was admittedly not a state; and under the Eleventh Amendment states could only be sued by another state or by a foreign nation. He holds for the court that it is not a foreign nation, that the court is without jurisdiction, and that "if it be true that the Cherokee Nation have rights, this is not the tribunal in which those rights are to be asserted."<sup>2</sup>

<sup>1</sup> Before filing his bill Wirt approached Marshall through a friend with the expressed intention of letting Marshall's advice control his action (Beveridge IV, 542); but Marshall declined to commit himself. (Kennedy II, 296-7).

<sup>2</sup> Mr. Justice Johnson concurs, holding that the Cherokee Nation is not a foreign nation and that the question is political and not judicial. Mr. Justice Baldwin concurs on the ground that it was not a nation and asserts (p. 49) that "this is the first assertion by them of rights as a foreign state within the limits of a state."

Mr. Justice Thompson delivers 31 pages of dissent; Mr. Justice Story concurring with him without separate opinion. This dissent distinctly says that the merits of the controversy are not taken into consideration, but that in considering the question of jurisdiction it is assumed that the allegations are true. It holds that the Cherokee Nation is a foreign nation, and the remarks to which Governor Gilmer took exception (Gilmer's Georgians, 378) refer entirely to undenied allegations in a case which the learned Justice found to be within the jurisdiction of the court, and which he must assume to be true.

Duval and M'Lean, JJ., delivered no opinions and apparently adopted that of the Chief Justice delivered as the opinion of the court. The case was therefore thrown out for want of jurisdiction by a majority of five to two.

## INDIAN MISSIONARIES' CASES

In 1830 Georgia passed a statute prohibiting white persons from residing in the Cherokee territory without a state license. Worcester and Butler, two earnest and zealous missionaries whose courage and determination must excite our admiration, and who had permission of the United States to reside there, persisted in remaining in the forbidden territory notwithstanding much warning. They were arrested, indicted, convicted and sentenced to four years in the Georgia penitentiary.

They sued out writs of error and the Legislative action in the case of Tassels (the Graves Case was later than this) was substantially repeated by a vigorous report from a committee and a belligerent joint resolution of Dec. 24, 1831, directing the Executive to ignore the writ and to resist and repel by force any interference with Georgia's administration of her criminal laws.<sup>1</sup>

That Georgia was not anxious to persecute these zealots but only to maintain her claim to the jurisdiction, appears from her continuing offer from the beginning to pardon them on the sole condition that they would promise not to again violate this law.<sup>2</sup> This they stubbornly declined until Georgia's equally stubborn resistance had finally demonstrated that the Supreme Court of the United States could not help them. They were then pardoned by Governor Wilson Lumpkin.

These cases<sup>3</sup> were argued by Sergeant and Wirt for the missionaries, with no appearance, and of course no counsel, for the State of Georgia. The Clerk of the Court, without the knowledge of the Judge, had filed the record in response to writs of error, and the Court first considered the question whether the record was properly before it, holding that it was.

<sup>1</sup> Ga. Laws 1831, 259.

<sup>2</sup> Gilmer, 422 et seq.

<sup>3</sup> Worcester v. Georgia; Butler v. Georgia, 6 Peters 515 (1832).

Georgia did not appear. Chief Justice Marshall delivering the opinion of the Court which occupies 26 pages. The jurisdiction of the court on writ of error to State Courts, never recognized by Georgia until it was settled on the battlefield, had then been finally settled to the satisfaction of the Supreme Court<sup>1</sup> and was not discussed. The merits of the claim of Indian sovereignty, which he did not discuss in the Cherokee Nation case, necessarily came up in this one. Among other things he holds that the only title which Europeans acquired in America against the Indians "was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not affect to claim; nor was it so understood." He holds that Georgia had admitted until 1828 the prior claim of the Indians, and that her recent statutes were unconstitutional, null and void. The Georgia court was reversed by a majority of five to one, with final judgment for discharge of the prisoners.<sup>2</sup>

They were not discharged. Encouraged possibly by a statement attributed to Andrew Jackson that "John Mar-

<sup>1</sup> *Cohens v. Virginia*, 6 Wheat. 264 (1821).

<sup>2</sup> Mr. Justice M'Lean separately concurs in an opinion occupying 33 pages. He sets out (p. 585) what he claims to be Georgia's admissions in conflict with her present position; in 1796 by the Yazoo Repeal Act; in 1819 in a memorial to the President; in the proclamation of the Governor in 1825; and in "many other references" (p. 586). On the other hand he sets out Georgia's meritorious claim that the policy of the United States in advancing civilization among the Cherokees was so increasing their attachment to the soil as to make it more and more difficult each day for the government to carry out its covenant of 1802 to extinguish the title to the Indian lands. (pp. 587, 588, 595).

Baldwin, J., dissented on the grounds stated in his opinion in the Cherokee Nation case where he had concurred in holding that the court was without jurisdiction. There were no other opinions.

Beveridge's account of these cases (IV, 547) contains no misstatements of fact, but gives an unfair impression. He ignores the repeated warnings to depart from the disputed territory and the continuing offers to pardon, and in referring to the maltreatment of the guard he fails to mention the prompt remedies applied by the Governor and the dismissal of the officer who was responsible. And the claims of "sovereignty" made by so many states in these formative days seem to amuse him.

shall has made that decision, now let John Marshall enforce it,"<sup>1</sup> Georgia ignored the judgment.

Andrew Jackson was in sympathy with Georgia and but a short while elapsed before the United States tardily carried out this covenant to extinguish all Indian titles when this could be done peaceably and on reasonable terms. On December 4, 1838, the last of the Cherokees departed forever for the western lands allotted to them.<sup>2</sup>

From 1838 this irritating cause of friction, this exciting and vital issue, were things of the past, but they had sown seed which tended to intensify the state rights doctrine, which shortly thereafter was fanned into a consuming conflagration by the slavery question and ended in civil war. In no other way could it have been ended.

#### GEORGIA POLITICS

The only other judicial constitutional conflict between Georgia and the United States is an able, earnest and belligerent political essay delivered from the bench of the Supreme Court of Georgia in January 1854 as an *obiter dictum* of eighty pages by Judge Benning, who also delivered the judgment of the court.<sup>3</sup> The labor, the research and the learning devoted to its preparation, and the zeal and fire of its style are in inverse ratio to the notice which it has attracted. To understand, however, why it was delivered we must know its atmosphere, and before considering it we must look from a historical point of view at the political conditions of the day in Georgia, and at Judge Benning's political activities prior to his elevation to the bench.

<sup>1</sup> Stimson 208; Kennedy II, 323; Carson 269.

<sup>2</sup> Phillips, 86. William Wirt's direful predictions in his argument before the Supreme Court of the direful consequences to flow to this "Nation" from such a removal were fortunately unfounded. The annual report of 1848 of the Indian Agent of the Government shows the gratifying progress and the prosperous condition of the tribe in the new home which it had then occupied for ten years. (Kennedy II, 296). But see "Bill Arp." 27-30.

<sup>3</sup> Padelford, Fay & Co. v. Savannah, 14 Ga., 438, noticed at length, *post* p. 104, *et seq.*

In the first half of the nineteenth century there was a constant shifting of political parties in Georgia with issues more or less uncertain and undefined. For a long time they were known as the Troup Party and the Clarke Party, divided chiefly as the masses against the classes, the country against the city; but unanimous in advocacy of state rights. Then there were Democrats and Whigs, but the southern wings of these parties were not always in accord with the northern wing, and they were all for state rights. Niles Annual Register had a habit in its annual review of disclaiming ability to understand Georgia politics.<sup>1</sup> The Georgia Legislature had adopted a fixed habit of annual remonstrance on political subjects.<sup>2</sup> There was presented to the Legislature in 1810 a petition to abolish lawyers as a "useless pest", which is explained only on the ground that the petition came from partisans of Clarke and most of the lawyers were followers of Troup.<sup>3</sup> It was not granted. It is a coincidence that quite a number of these unresponsive legislators were themselves lawyers.

Afterwards there came the Constitutional Union party, the Southern Rights party, the Know Nothings, and in the election of 1860 the three wings of the Democratic party.

Governor Troup entertained the most extreme state rights views. He wrote to the Georgia delegation in 1827<sup>4</sup> that the United States Courts had no jurisdiction over state officers undertaking to carry out state laws; but "I can never admit that wrongs done by officers of the United States to officers of the state shall not be inquired into and redressed by the state tribunals"; and maintained that there was no tribunal which could settle issues between the Federal Government and the State; the Federal Supreme Court was not competent because it was appointed by the

<sup>1</sup> Phillips, 127.

<sup>2</sup> *Ibid.* 92.

<sup>3</sup> *Ibid.* 10.

<sup>4</sup> Harden, 490, 491.

Government, and the State Court was not competent for the reverse reason.<sup>1</sup>

The Board of Trustees of the State University at Athens, assembled for the management of that institution, seemed to be the center of political activities.\* All parties were represented and they used the meetings at Athens as a convenient time for the assembly of their political committees.

<sup>1</sup> In 1834 he wrote (Harden, 522) to constituents: "Gentlemen: The States are sovereign, or they are not. We prove the affirmative, by the Declaration of Independence, and the Articles of Confederation—let the federal party prove the negative if they can. If a State is sovereign, it can do anything—it can nullify any act of Congress, or secede; is subject only to the law of nature and nations, which it is bound to respect. This exercise of its sovereign power has nothing to do with the Constitution, much less with revolution—it is above the Constitution, because it has the law of nations for its constitution, and it can have no connection with revolution, because, of all acts of human power and authority, it is most commanding, peaceable, legitimate and sacred. Our opponents involve themselves in inextricable difficulty. The Federalists say that the powers of sovereignty have been divided between the State and Federal Governments—if so, the higher powers having been given to the latter, it possesses the greater sovereignty, and on that account must be the judge of its own powers, which makes it absolute. And yet the Federalists admit that sovereignty resides in the people, by which they mean the whole people of the United States; when or how they became one people, they cannot explain. The weaker among them are divided in opinion, some saying it resides in the United States, without being able to show a substantive, distinct and independent being called the United States, and capable of receiving sovereignty; and others that the Government is sovereign, because the people have vested their sovereign powers in the Government; as if a Government, a mere agent, were capable of receiving sovereign powers. Thus inconsistency follows inconsistency, and contradiction contradiction. If sovereign powers could vest in a Government, that Government could transfer them to any subject capable of receiving them, in virtue of that very sovereignty."

When he wrote to the Secretary of War in 1827 that he would resist the United States by force as "a public enemy", as "invaders", and as "unblushing allies of savages" (Harden, 485), and raised troops for the purpose, Niles Register said (Harden, 489) "if Gov. Troup has been right this Union is held together only by a rope of sand and is not worth an effort to preserve it."

In 1830 at a Jefferson Day dinner in Washington at which Mr. Justice Wayne of the Supreme Court of the United States (a native Georgian) also spoke, he gave the following toast:

"*The Government of the United States*—With more limited powers than the Republic of San Marino, it rules an Empire more extended than the Roman, with the absoluteness of Tiberius, with less wisdom than Augustus, and less justice than Trajan or the Antonines." (Harden, 510).

\* Phillips, 125.

This did not tend to keep the University out of politics, and the evil effects of the practice survived its discontinuance.

Every man was in politics, not excepting judges. Eugenius A. Nisbet whom Benning succeeded on the State Bench, had not only filled many political offices, but was the leader of the Know Nothings in 1856.<sup>1</sup> Charles J. McDonald, who was Benning's associate on the bench, advised secession in 1850.<sup>2</sup> Joseph Henry Lumpkin, presiding judge of the Supreme Court from its organization in 1845 to his death in 1867 and Chief Justice in 1866, was for "immediate dissolution of the Union" in 1850,<sup>3</sup> and he writes to Howell Cobb in 1848<sup>4</sup> that he was ardently for slavery, as was Warner his associate on the Bench, and speaks of the possibility of the north dissolving the Union on a false issue. In 1851 he writes to Howell Cobb a distinctly political letter advocating a new state party and offering his associate, Judge Hiram Warner as a candidate for Governor.<sup>5</sup> In 1849 his kinsman writes to Howell Cobb that Judge Lumpkin is going to a political convention "for our benefit."<sup>6</sup>

The Missouri Compromise and its repeal, the Wilmot Proviso, and all the other Federal legislation proposed or enacted kept the political caldron seething, and however much we may deplore the influence which settled opinions on cardinal political principles may have upon a judge, it would be absurd to expect them to be immediately dissipated because he had assumed judicial office.

Judge Benning was an able, upright, conscientious man in all the relations of life, but he did not divest himself of his political convictions when he came to the bench. Doubtless they were part of his religion, and to his con-

<sup>1</sup> Phillips, 179.

<sup>2</sup> *Ibid.* 164.

<sup>3</sup> Ga. Corr., 207.

<sup>4</sup> *Ibid.* 94.

<sup>5</sup> *Ibid.* 227.

<sup>6</sup> *Ibid.* 160.

science were as necessary a foundation for his judicial decisions as were his fundamental views on the protection of life liberty, property and the pursuit of happiness. And we must read his opinion in the light of the atmosphere which then pervaded the entire state.

To understand, so far as we may the extremes to which a learned judge permitted himself to be carried, we must know something of the man. Henry Lewis Benning was born on April 2, 1814 in Columbia County, Georgia; graduated with first honors at the State University in 1834; settled in Columbus; and in 1837 was appointed by Gov. Charles J. McDonald, afterwards his associate on the Supreme Bench, as Solicitor General of his circuit. He was then but twenty-three years of age. He filled this office for several years, resigned, and devoted himself exclusively to general practice, by no means neglecting politics. His daughter, who writes his biography<sup>1</sup> correctly describes him as a "strong Democrat and ardent States' Rights man." In 1851 he was the candidate of the Southern Rights party for Congress, but, although he led his ticket, the Constitutional Union candidate won.<sup>2</sup>

When the second term of Eugenius Aristides Nisbet, one of the original members of the Supreme Court in 1845, and a great judge, expired in December 1855, Benning succeeded him. Judge Nisbet was a Whig and Benning was a Democrat. Judge Nisbet did not stand for re-election. The General Assembly was Democratic. I know not whether it was merely a desire for retirement or realization that his political opponents would not support him. While he and Benning belonged to different political parties, as to state rights there was no difference between them. Whatever a man might call himself he was, because of Georgia's conflicts with the Government and its Supreme Court, always and on all questions an advocate of narrow construction, of almost unbounded state sove-

<sup>1</sup> Men of Mark in Georgia, III., 259. Atlanta, 1911.

<sup>2</sup> Columbus Enquirer, July 11, 1875.

cignty, and of strict limitations upon the power of the Federal government. As early as 1849 Benning advocated dissolution of the Union and formation of a "Consolidated Southern Republic".<sup>1</sup>

In advocacy of State Rights and opposition to the expansion of Federal power Judge Benning was not surpassed by any other Georgian of conspicuous standing; but his predecessor was the author of the vigorous report on the Indian cases adopted by the legislature and approved by Gov. Wilson Lumpkin December 26, 1831. (Gilmer, 428 et seq.). Such of Benning's letters as are available supplement the meagre information contained in the limited biographical material otherwise accessible. On February 23, 1848, not yet thirty-four, he responds to a request from Howell Cobb, to write him "soon and fully" his "views on certain pending political matters", with a very long and characteristic letter discussing the then critical political situation growing out of the Wilmot Proviso, criticising some of the views of Cobb, who was his great friend, and submitting carefully drafted resolutions on the controlling political issues, the details of which are not germane to my subject. (Ga. Corr. II, 97).

On July 1, 1849, (ibid. 168) this young man of thirty-five writes to the same correspondent: "First then it is apparent, horribly apparent, that the slavery question rides insolently over every other everywhere—in fact that is the only question which in the least affects the result of elections. It is not less manifest that the whole North is becoming ultra anti-slavery and the whole South ultra pro-slavery." (ibid. 169); and further: "I no more doubt that the North will abolish slavery the very first moment it feels itself able to do it without too much cost, than I doubt my existence. I think that as a remedy for the South, dissolution is not enough, and a Southern Confederacy not enough. The latter would not stop the process by which some states, Virginia for example, are becoming free viz., by ridding themselves of their slaves; and therefore we should in time with a Confederacy again have a North and a South. The only thing that will do when tried every way is a *consolidated* Republic formed of the Southern States. That will put slavery *under the control of those most interested in it*; and nothing else will; and until that is done nothing is done." (ibid. 171).

That these views were not confidential is shown by John H. Lumpkin, a lonely Union man writing from Rome to Howell Cobb October 5, 1850 (ibid. 214), saying: "As soon as the California Bill passed and Towns issued his weak and ill advised proclamation calling a convention of the people the fire-eating press took ground for secession, and Colquitt, Benning and others of that ilk, came out openly for secession.

Benning's biographer tells us that after the Confederacy fell he was broken-hearted. There is a letter from Howell Cobb to his wife (ibid. 687) from Macon, Ga., September 1, 1867, telling of a night he spent with General Benning, how they sat up until half-past three, how he "found that our minds had been running very much in the same channel about the future prospects of the country", and expressing the opinion that if conditions did not change "we cannot see how the South can possibly remain inhabitable by white people." Fifty years have passed. Who can offer today a solution of the problem?

Judge Benning failed of re-election to the Supreme Bench in December 1859<sup>1</sup> and resumed his political activities.<sup>2</sup> That his reputation was not confined to his state is shown by another letter from Cobb to his wife from Montgomery, February 20, 1861, stating that Judge Benning was among those seriously considered for the Confederate Cabinet.<sup>3</sup> But he was destined for harder service.

He lived up to his convictions. He promptly volunteered and on August 14, 1861 became Colonel of a regiment in Toombs' brigade. On April 23, 1861 he was appointed a Brigadier General in the Provisional Army of the Confederacy. That he was a gallant soldier is testified by his soubriquet of Old Rock. He was wounded at The Wilderness and was finally paroled at Appomattox. It is said that in 1865 he was commissioned as Major General, but accessible official records<sup>4</sup> do not show it. He

<sup>1</sup> Judge Joel Branham, the well beloved antiquarian of the Association, who has practised at the Georgia bar for sixty-five years, writes June 11, 1921: "The election of Judges of the Supreme Court in 1859 was by the legislature. William Dougherty, then of Columbus, Ga., had brought a number of suits against the stockholders of the Columbus banks. These were known as the Columbus Bank cases. Judge Benning held in those cases that on the expiration of the bank's charter the debts of the bank, pro and con, were extinguished and that the liability of the stockholders for the debts of the bank ceased. On account of this ruling Mr. Dougherty appeared at Milledgeville when the Legislature was in session as the election came on and defeated Judge Benning for Supreme Judge. I saw them both pass through the Capitol grounds at that time. Judge Benning wrote a pamphlet in vindication of his ruling and printed it. The contest was a very bitter one." Richard F. Lyon was elected. I cannot find Judge Benning's pamphlet. His Columbus Bank dissenting opinions reflect the industrious research and vigorous reasoning shown in the Padelford case. For some of the Columbus Bank cases see *Thornton v. Lane*, 11 Ga., 498; *Moultrie v. Smiley*, 15 Ga. 289, 339; *Adkins v. Thornton*, 19 Ga. 325; *Robinson v. Lane*, 19 Ga. 337; *Robinson v. Adkins*, 19 Ga. 398; *Moultrie v. Hoge*, 21 Ga. 513; *Robinson v. Beall*, 26 Ga. 17, 36. Note (19 Ga. 341) Judge Lumpkin's complaint that "with every change in the court the same questions are reproduced for readjudication" and that "a decision in these bank cases settles nothing". Declining to "spend his time and strength for naught" he delivers a 12 page opinion.

<sup>2</sup> Ga. Corr., 524.

<sup>3</sup> Ga. Corr., 544.

<sup>4</sup> Wright does not include Benning in his list of Major Generals.

died in the active practice of his profession on July 9, 1875, honored and beloved by those whom he had so faithfully and so ably served.

Such is the man who delivered the great *obiter dictum* on the relation of the states to the Federal government, which is the original impelling cause of this paper.

#### PADELFORD V. SAVANNAH

The Supreme Court, organized in 1845, had recently undergone a change from its original personnel of Lumpkin, Nisbet and Warner. Warner had been succeeded by Starnes, Nisbet by Benning. Lumpkin, who was later (1866) our first Chief Justice, was still there to remain until his death in 1867. Judge Benning's first sitting was in January 1854. The sixth case at that term, and the third case in which the opinion was delivered by Benning, was *Padelford, Fay & Company v. The Mayor and Aldermen of the City of Savannah*.<sup>1</sup>

In 1842 the City of Savannah had passed an ordinance levying a tax on commission merchants of one-half of one per cent. on the amount of all sales of commodities within the corporate limits for commission or on joint account, when not included in returns as stock in trade for ad valorem taxation. The plaintiffs had refused to pay this tax upon sales of goods imported by them from abroad and sold in the original package, relying upon *Brown v. Maryland*<sup>2</sup>, holding that a Maryland statute requiring a license as a prerequisite to selling imported articles was in effect a tax on imports, and therefore unconstitutional. Judge Fleming, the able judge of Chatham Superior Court, sustained the tax. With the sixteen headnotes and the half-page report on the facts, the report fills eighty-two pages of 14th Georgia, of which eighty pages are covered by the opinion of this able young judge fresh from the active practice of law, including several years' experience as Solicitor General, vigorous and alert,

<sup>1</sup> 14 Ga., 488 (1854).

<sup>2</sup> 12 Wheat., 419 (1827).

and showing by this opinion that to him the doctrine of State Rights had the sanctity of a religion.

#### THE JUDGMENT

Lumpkin and Starnes delivered no opinion. In less than five pages Judge Benning delivered the opinion of the Court to the effect that *Brown v. Maryland* held to be unconstitutional only the *prohibition* of the sale of the import by the importer without a license from the State, whereas the ordinance of Savannah in no way obstructed the sale, but only laid a tax on the proceeds of the sale of *all* commodities, including imports. The judgment lays stress on Chief Justice Marshall's statement in *Brown v. Maryland* that "when the importer has so acted upon the thing imported that it has become incorporated and mixed with the mass of property in the country, it has perhaps lost its distinctive character as an "import," and held that the conversion of the import into money had effected this result and taken the case from the doctrine thus laid down.

If this were all, this case would have no special interest, but the learned judge does not stop here but proceeds: "According, then, to the principles laid down in *Brown v. Maryland* this Ordinance is not unconstitutional. This is the opinion of every member of this Court. But speaking for myself, I am not willing to let the decision rest on this ground alone."

#### BENNING'S DICTUM

After laying down five propositions (including unconstitutionality of the Twenty-fifth Section) he says: "I, alone, am responsible for them, and for all that may be said in their support. What the other members of the Court may think of them, or of anything I may say in their support, I know not." We then have eight pages of able argument to show that *Brown v. Maryland* has been overruled by the License Cases, and then his analytical and learned discussion of the Constitution, its context, its creation, its

ratification, and the debates which all these produced. He denies the doctrine of implied power and supports the doctrine of narrow construction. From Elliott's Debates he quotes at length what was said in the State conventions which ratified. Of Georgia's convention he says we have no record, but does not mention her prompt and unanimous approval.

He argues from the journals and the debates of the conventions that the omission from the Tenth Amendment of the word "expressly", which the corresponding provision of the Articles of Confederation had contained, was unintentional, and he inserts it where it should be, making it read:— "The powers not expressly delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It is noteworthy that when the Confederacy redrafted the Constitution it used (Article VI) the language of the Tenth Amendment without inserting "expressly". This could hardly be an oversight, for Thomas R. R. Cobb, a great lawyer, the court reporter of Benning's opinion, was a leading member of the body which made the Confederate Constitution.

Of *Chisholm v. Georgia*, he says, "Georgia treated the court with contempt". Emphasizing his insertion of the word "expressly" in the Tenth Amendment he argues against the jurisdiction sustained by the Supreme Court because it is not *expressly* stated that a State could be sued. He dwells on Georgia's triumph and the adoption of the Eleventh Amendment.

He speaks with satisfaction of the hanging of Tassels and Graves and severely criticises the decision in the Worcester and Butler cases, expressing his pleasure that Georgia *did not even protest* against the jurisdiction. He denies the constitutionality of the appellate jurisdiction over State Courts conferred by the Judiciary Act, again empha-

sizing the word "expressly" which he had interpolated. He refers to the language of the Eleventh Amendment, emphasizing its mandate against liberal construction, and says: "But the makers of the Constitution were deceived. Congress and the Supreme Court, notwithstanding this rebuke, went on in their old course of construction. They found a warrant in the Constitution for Jay's treaty; for the alien act; for the sedition act. So the makers of the Constitution thought they would try another remedy than amendment of that instrument. They concluded to smite the construers. This they did. Whenever they could reach an offender, they hurled him against the ground, and put their foot on him, and kept him there till he died or repented. The Supreme Court offenders were beyond their reach. They had in their offices a tenure for life; and as all the offenders in this case were such as not to be affected by anything but punishment, those who could not be punished continued their courses."

#### EQUALITY OF COURTS

The earnest and able argument is too long to follow in detail, but we must note its most unique features. Says Judge Benning: "But are not the decisions of the Supreme Court of the United States to govern this Court, as to the rule of construing the Constitution? They are not, any more than the decisions of that Court are to be governed by the decisions of this. The Supreme Court of the United States has no jurisdiction over this Court, or over any department of the Government of Georgia. This Court is not a United States Court; and therefore, neither the Government of the United States, nor any department of it, can give this Court an order. It follows, if this be true, that decisions of that Court, are not precedents for this Court."

He argues that a logical result of the maintenance of appellate jurisdiction makes it extend to *all cases in State courts*

of whatever nature,<sup>1</sup> and concludes "that the Supreme Court of Georgia is co-equal and co-ordinate with the Supreme Court of the United States, and not inferior and subordinate to that Court; that as to the reserved powers, the State Court is supreme; that as to the delegated powers, the U. S. Court is supreme; that as to powers, both delegated and reserved—*concurrent powers*—both courts, in the language of Hamilton, are equally supreme; and that as a consequence, the Supreme Court of the United States has no jurisdiction over the Supreme Court of Georgia; and cannot, therefore, give it an order, or make for it a precedent."

#### MARSHALL AND STORY.

He then attacks the Supreme Court on the ground that its decisions are political and the judges political partisans

<sup>1</sup> "But again: if this sort of appellate jurisdiction exists, then it exists equally with respect to a State Court of one grade, as to a State Court of another. It exists as to all Courts 'inferior' to the Supreme Court; and if the highest State Courts are inferior to that Court, still more so are the less high. If this sort of jurisdiction exists, then there may, as far as this State is concerned, be an appeal to the Supreme Court of the U. S., from the Supreme Court of the State, from the Inferior Courts, from the Ordinary, from the Justice's Courts, from Corporation Courts, and perhaps from Courts Martial. This appellate jurisdiction, then, if it exists, extends to every State Court alike.

"And the same sort of construction which makes it to exist at all, as to any State Court, will much more easily make it extend to every case that can arise in any such Court. The cases to which it is extended, as mentioned by the Constitution, are 'All cases in Law and Equity, arising under this Constitution, the Laws of the United States, and treaties made, or which shall be made under their authority' and others. But these are enough. What are cases 'arising under the Constitution'? Under the *liberal rule* of construction, it is easy to say that the Constitution is an instrument which gives one part of the powers of the Government to the General Government; and gives the other part to the States—that *all* power is given by the Constitution. Now if that be said, no case of any kind can arise in a State which will not draw in question some power of the State, or some power of the General Government; but if a case draws in question a power of either, it is a case arising under the Constitution; because, on this theory, the powers of both are derived from the Constitution."

Happily his predictions of the logical consequences of the power which has now been exercised for over 130 years, and has been unquestioned for half a century, have not proven to be correct.

and inserts a biography of John Marshall (the special object of his attack, "and Justice Story was a good second") to show the number of political offices he had filled; impugns his motives in accepting a place on the bench, which served only "to make him more bold in the avowal of his principles. He no longer had to answer for them at the ballot-box." Story, he says, was put upon the bench as the only lawyer of the Republican Party "of much note". But once on the bench he forsook his party and became the humble interpreter of Marshall—the Dumont to Bentham.<sup>1</sup>

Strange that he adds to this attack a statement that all constitutional questions "must be more or less partisan".<sup>2</sup>

#### TWO NOTEWORTHY PROPOSITIONS

Having thus vigorously supported his Declaration of Judicial Independence and as vigorously attacked, to an extent for which the political atmosphere (soon to become a war storm) must be the justification, John Marshall and his associates, he advances two propositions for which

<sup>1</sup> "Now, the effect of the decisions of the Supreme Court, to which I have referred, is to put up the National Party and to put down the State's Rights party. The decisions are, therefore, political. Indeed, they discuss the same topics and come to the same results, in all respects, as do the speakers in Congress, the stump orators out of Congress, and the newspaper writers in and out of it—of the same politics as the majority of the Court making the decisions.

"Are the Judges partisans? What are their antecedents? The leading Judges on the bench of the Supreme Court, before the era of Judge Marshall, were Jay, Wilson and Ellsworth. Each of these had been an active and ardent politician before he went upon the bench. He had acquired his bend in politics. On the bench, he only uttered the same Constitutional doctrines which he had uttered off.

"In the era of Judge Marshall, which lasted through thirty-four years, he was the Chief of the Court and Justice Story was a good second. Was Judge Marshall a politician? Let this summary of his life, taken from his biography, in the *National Portrait Gallery*, answer." (He here inserts a detailed biography of Marshall and follows it by elaborate attack upon him as a political partisan judge controlled by improper motives.)

<sup>2</sup> "And partisan decisions—and all decisions on Constitutional questions, must be more or less partisan—*ought* not to bind as precedents, because they are not made by the tribunal which, in the last resort, is supreme. This tribunal is the people of the States—the authors of the Constitution."

I have vainly sought support or approval of any other court, of any other judge. The second seems to have been completely ignored, even by the reporter (Thomas R. R. Cobb) who drafted the headnotes. His first proposition is that the seller of the import is not injured by the tax and has no right to complain, because the tax is ultimately paid by the consumer, who alone of private persons is injured; but the consumer, by buying the taxed article and paying the tax included in the price, waives his objection, therefore no one can complain.<sup>1</sup>

I desired to cite one or more authorities to show the acknowledged unsoundness of this stated rule, but moderate search proved fruitless, *pro* or *con*. Of course, there are many reported cases in which payers of similar taxes have sued without question of their right, and prevailed. The Padelford *dictum* seems to stand as the sole authority on this question—solitary, ignored, forgotten! Even the reporter seemed reluctant to father it in a headnote. Referring to the tax ordinance he states the proposition thus: "(16) If void, it works no wrong to these plaintiffs."

#### THE CONSTITUTION NOT FOR THE INDIVIDUAL

The second proposition, totally ignored by the reporter, (and so far as I can discover by everyone else except the author of the note to the Booth case in 11th Wisconsin who holds it up to scorn)<sup>2</sup>, will probably stand as the most

<sup>1</sup> "If the law is void and yet is enforced who is injured by it? The seller of the import? not at all. *He* is paid the tax by the purchaser from him before he pays it to the City. The tax is ultimately paid by the *consumer* of the article. The price or sale of which is taxed. The merchant puts the amount of the tax, as he does every other item of the cost of the goods, in the price which he fixed upon them— and when he sells, he gets from the purchaser that amount with the rest. If the tax injures any private person at all, therefore that person is the *consumer* of the taxed article, and not the *seller* of it. The *consumer* is the injured man; and he, by buying the taxed article and paying the tax included in the price, *waives* his objection to the tax. It is time enough to hold a Law, made under the authority of the State, to be a violation of the Constitution, when it is complained of by somebody that it injures." (The italics are his).

<sup>2</sup> *Vid. Post* pp. 118, 127, 128.

radical view of the Constitution which has emanated from any bench.

"But, indeed, no private person has a right to complain, by *suit in court*, on the ground of a breach of the Constitution. The Constitution, it is true, is a compact, but *he* is not a party to it. The States are the parties to it. And they may complain. If they do, they are entitled to redress. Or they may waive the right to complain. If they do, the right stands waived \* \* \* No, if there existed such claimants, they would have to appeal, each to his own sovereign for redress. It was that sovereign's business to get enough from the offending sovereign to cover all private losses of his own citizens—and if he did not get enough to do that, those citizens must look to him, alone, for indemnity."

Here endeth this wonderful *obiter dictum*. When I first read it many years ago I wondered, and I have wondered ever since, whether this brilliant upright young man (he was not quite forty), this ardent patriot, when he so vehemently charged his brothers of another jurisdiction with unworthy motives and with bringing their political partizanship to the bench, was as blissfully unconscious as he seems to be, that having barely completed his exchange of the political platform for the judicial chair, he was himself delivering as a judicial opinion an ardent partisan political speech on the most stirring and the most vital political question which had ever arisen in America.

In less than seven years came the storm. For four long years the torrents poured down in sheets, the thunder claps terrified, the lightning struck and burned, and these vital questions were settled—finally settled—*vi et armis*. Acceptance of the settlement by the losers has been gradual, complete, but not absolutely unanimous. Never will sentiment cease to be a leading factor in the rule of man. Today, sixty years after the strife, there are in both sections men and women, some then mere children, some then unborn, to whom the one view or the other is still a living

basic creed, and who will regard any inclination towards one side or the other, even on the legal questions involved, as mere political partisanship, if not rank disloyalty to tradition.

#### THE PADELFORD CASE IGNORED

I have made diligent search not only for judicial or text book citations of the Padelford case but for mere mention of it anywhere. I am by no means certain that I have found them all; for example, I have found a citation in 6 Ohio State Reports and a citation in a note appended to 11 Wisconsin, only because those cases had otherwise attracted my attention. The search for citations could only be exhausted by examination of every volume of State reports—in many cases a page to page examination, as the earlier reports have no Tables of Cases Cited.

It is noticed but twice in the Georgia Reports. In *Gould v. Atlanta*<sup>1</sup> Judge Bleckley cites it as authority tending to show that the tax on sales "looks very like" a tax upon property. In fact it is an authority *contra*.<sup>2</sup>

At a later day Chief Justice Bleckley makes this quaint reference to it:

"After the State has yielded to the Federal army, it can very well afford to yield to the federal judiciary. Our sister States, Alabama and Louisiana, have so done. *State v. Agee*, 83 Ala. 110; *Simmons Hardware Co. v. McGuire*, 39 La. An. 848. The doctrine of coequality and co-ordination between the Supreme Court of Georgia and the Supreme Court of the United States, so vigorously announced by Benning, J., in *Padelford v. Savannah*, 14 Ga. 439, regarded now from a practical standpoint, seems visionary. Its application to this, or any like case, would be a jarring discord in the harmony of law. Moreover, any attempt to apply it effectively would be no less vain

<sup>1</sup> 55 Ga., 685 (1876).

<sup>2</sup> 14 Ga., 448-4.

than discordant. \* \* \* \* Any failure of due subordination on our part would be a breach, rather than the administration, of law."<sup>1</sup>

There is but one other judicial notice. Chief Justice Bartley of Ohio in his dissenting opinion in *Piqua Bank v. Knoup*<sup>2</sup> refers to it as an elaborate opinion "exposing and condemning in strong and severe terms this unwarranted exercise of power by the Supreme Court of the United States under the Twenty-fifth Section of the Judiciary Act"; but no further.

The note appended to the Booth case<sup>3</sup> takes more notice of it than any other writer; but in this caustic way:

"In a more recent case, *Paddelford (sic) v. Mayor*, the supreme court of that state is reported to have declared, in *obiter dicta*, against the appellate jurisdiction of the Supreme Court of the U. S. It is a sufficient comment on the judgment of the court, to say that in the same opinion they declared that 'no private person has a right to complain by suit in court, on the ground of a breach of the constitution of the United States; for, though the constitution is a compact, he is not a party to it.' I think that even those persons who are most clamorous for the right of denying an appeal, and who cite Georgia as a precedent, would hardly take its whole doctrine; that there are some guaranties of individual right in our constitution which they would not be willing to surrender, even at the price of depriving the supreme court of jurisdiction, in appeals from the state courts."

In 1857 there came before the Supreme Court of South Carolina a case involving a tax on sales, including sales of imported articles.<sup>4</sup> The court holds, as did the full court in the Padelford case, that a tax on sales differs from a license to sell and is not prohibited by *Brown v. Maryland*.

<sup>1</sup> *Wrought Iron Co. v. Johnson*, 84, Ga., 759 (1890).

<sup>2</sup> 6 Ohio State, 377, post p. 45

<sup>3</sup> 11 Wis. 529 vid post, pp. 47-8.

<sup>4</sup> *State ex rel Rhett v. Pinckney*, 10 Rich. Law, 474 (1857).

It was then three years since the decision of the Padelford case in an adjoining state. It covered the same question, but it was not noticed.

Thus it appears that *judges* have noticed it from the bench but three times: Judge Bleckley erroneously cited it, without quoting it or even giving its name, in 55 Ga.; the same judge in 84 Ga., again without quoting, quaintly places it permanently in the list of historical reminiscences; and a dissenting judge in 6 Ohio State Rep. makes a very brief reference to its "strong and severe terms".

Cyc. cites it six times:<sup>1</sup> Once "compare Padelford v. Savannah"; once, as "it has been held"; once, as "it has been decided"; once on a definition of the word "instance"; once on the presumption of constitutionality; and once on the contract impairment clause of the Constitution.

Lawyers' Reports Annotated mention it in a learned note<sup>2</sup> as one of the cases in which there was refusal to yield to the Supreme Court of the United States, and stated the obvious conclusion that the question was now well settled. I find no other law books in which even the name of the case appears.

In "Judicial Nosegays" by Harry S. Strozier<sup>3</sup> the author briefly quotes Judge Benning's assertion of equality between state and federal courts and Judge Bleckley's reference in 84 Ga.; and John W. Akin in his delightful sketch of Judge Hiram Warner,<sup>4</sup> referring to the latter's opinion in 37 Ga., that Georgia had no legal right to secede from the Union, finds it strange that he made no mention of the Padelford case.

Judge W. L. Grice<sup>5</sup> says: "Perhaps the longest opinion in our books is that of Padelford, Fay & Co. v. Mayor of Savannah, reported in 14 Ga., 438. It was a *certiorari*

<sup>1</sup> Shepard's Georgia Citations.

<sup>2</sup> 62 L. R. A., 518-543, 1904

<sup>3</sup> 32 Ga. Bar Assn. 1915, 135.

<sup>4</sup> 14 Ga. Bar Assn. 1897, 265.

<sup>5</sup> 28 Ga. Bar Assn. 1909, 134.

and involved only a small amount. It was said afterwards that Judge Benning's opinion in the case was largely a reproduction of his speech in the States' Rights Convention at Memphis, over which Judge McDonald presided. The war killed that decision as it did the one in the Dred Scott case, and both are buried in the same grave."

Mr. Z. D. Harrison's paper of 1916 "The Supreme Court of Georgia"<sup>1</sup> mentions Judge Benning and quotes from one of his opinions, but does not mention the Padel-ford case.

Judge Bleckley's memorial poem on Judge Benning dwells upon him only as a soldier.<sup>2</sup> The memorial before the court in which he sat contains little but oratorical composition, and, in common with every biographical sketch, contemporary or later, which I have been able to find, entirely ignores his noteworthy *dictum*.<sup>3</sup>

An examination of all of Judge Benning's opinions will show that this was the judicial effort of his life, and if he was subject to the ordinary human vanities he must have believed that he was building for himself an intellectual monument which would keep his name alive. He was clearly ambitious to be a great Judge; he was undoubtedly an able and an upright and fearless Judge. He lived after this for 21 years and it must have been a disappointment to him that his great effort had attracted so little attention. However much it may through the fortunes of war have become merely academic, it still has great historical interest; and I know of no single document which so clearly demonstrates that the existing differences on the proper construction of the Constitution were irreconcilable and would be harassing us to this day if we had not begun a more vigorous argument in a new form at Sumter and finished it at Appomattox. All good Georgians, and par-

<sup>1</sup> 33 Ga. Bar Assn. 128.

<sup>2</sup> Bleckley Memorial Vol. Ga. Bar. Assn. 1908, 153.

<sup>3</sup> 56 Ga. 695.

ticularly the members of the profession which he illustrated, should honor the memory of this vigorous defender of our rights.

#### LATER CONSTITUTIONAL CASES IN GEORGIA.

I have examined all the later Georgia cases up to 1861, involving the Constitution of the United States. None of them mentions the Padelford case. I omit some not connected with my subject.<sup>1</sup>

*Boston & Gunby v. Cummins*<sup>2</sup> involved alleged violation of the prohibition against *ex post facto laws* and the consideration of retroactive laws. It is interesting only from the expression of Lumpkin, J., delivering the opinion of the court: "*The unconstitutional Acts of the Legislature, State or Federal, are not laws; and no court will execute them, having a proper sense of its own obligations and responsibilities.*"<sup>3</sup> Benning, J., did not dissent. The statute was upheld as not being *ex post facto*.

*Perdue v. Ellis*<sup>4</sup> involved the right of the City of Griffin to exact \$500 for a retail liquor license. It was attacked as in conflict with the commerce clause of the Federal Constitution. Lumpkin, J., delivered the unanimous opinion of the court. After saying: "Whatever doubts may have existed in *eighteen hundred and thirty-nine*, or before or since, here or elsewhere, upon this subject, it is now no longer an open question",<sup>5</sup> he cites the *License Cases*<sup>6</sup> and quotes at length from five of the six Justices who delivered opinions, and incidentally quotes with apparent approval from *Brown v. Maryland*.

Of the *License Cases* he says: "We have nothing further to add, either by way of argument or authority, to enforce the doctrines of this thorough States' Rights de-

<sup>1</sup> Hamrick v. Rouse, 17 Ga., 56; Joice v. Scales, 18 Ga., 725.

<sup>2</sup> 16 Ga., 102.

<sup>3</sup> 16 Ga., 106.

<sup>4</sup> 18 Ga., 586.

<sup>5</sup> 18 Ga., 588.

<sup>6</sup> 5 How., 504.

cision, especially as the proposition has not been seriously controverted by Counsel, that the power of the *States* to regulate the domestic traffic in spirits, is complete, unqualified and exclusive”<sup>1</sup> (The italics are his.)

The Padelford decision was then but a year and a half old and this triumphant shout is evidently its echo; but it is not mentioned.

*Powers v. Armstrong*<sup>2</sup> involved title to property condemned by a bridge company but not paid for. There was then no prohibition in the Federal Constitution protecting property rights against the States, and the case was decided without reference to any Federal question. The unanimous opinion delivered by Judge Chas. J. McDonald, who had succeeded Starnes at the January Term 1856, held that the title had not passed, but the opinion is interesting in that no reasons are given. It does not say that a provision in the bridge company's charter to the contrary was unconstitutional, but simply that it was void; and no authorities of any kind are cited.

#### DARTMOUTH COLLEGE CASE APPROVED

*Dart v. Houston*<sup>3</sup> involved the constitutionality of a change by the Legislature in the management and government of the Brunswick Academy, and the Dartmouth College Case<sup>4</sup> was relied on. A little more than three years prior to this date Benning's ringing attack in the Padelford case on the Supreme Court and its authority had been delivered and he was still on the bench. Lumpkin was absent during this entire term because of illness.<sup>5</sup> As the judgment was reversed it took the concurrence of McDonald and Benning, JJ., to effect it. While Benning delivered no opinion he necessarily voted for reversal, and

<sup>1</sup> 18 Ga., 591.

<sup>2</sup> 19 Ga., 427.

<sup>3</sup> 22 Ga., 506 (1857).

<sup>4</sup> 4 Wheaton, 518.

<sup>5</sup> 22 Ga., 399.

his silence is concurrence in the opinion, which is expressly stated to be "by the Court".

Few decisions of the Federal Supreme Court have been more earnestly attacked, even to this day, than the Dartmouth College Case. Moreover, it was a case in which the Appellate Court had taken jurisdiction under the twenty-fifth section of the Judiciary Act by writ of error to the State Court of New Hampshire—a jurisdiction consistently and persistently denied and successfully resisted by Georgia until Lee surrendered at Appomattox. McDonald was hardly, if at all, a less ardent opponent of Federal encroachment than was Benning, and yet listen to the opening words of one of these judges speaking for both:

"The great and leading case which brings the grant of a charter or an act of incorporation of any sort within the protection of the Constitution of the United States, as a contract, is the case of the *Dartmouth College v. Woodward*.<sup>1</sup> That judgment has become *the law of the land, irrepealable by Congress, and irreversible*, except by the tribunal which pronounced it. It is, therefore, *a controlling authority* in this case."<sup>2</sup>

This official and express recognition is directly in conflict with Benning's opinion in the Padelford Case. It is all the stronger and more significant because Judge McDonald, in the course of his opinion<sup>3</sup> criticises the Dartmouth College Case. I have no suggestion for reconciling this conflict. The court in the Georgia case held that the Dartmouth College Case was not applicable because the Brunswick Academy was a public and not a private institution, which made its recognition as controlling authority an *obiter dictum*. Perhaps an irreconcilable glaring conflict between two *obiter dicta*, however near together in time, was regarded as immaterial.

<sup>1</sup> 4 Wheaton, 518.

<sup>2</sup> 22 Ga., 529.

<sup>3</sup> 22 Ga., 531.

## POST BELLUM CASES IN GEORGIA

We would naturally suppose that the cessation of the war in the field had ended the war in the courts. But not so in Georgia nor, as we shall see, in Wisconsin.

The lawfulness of secession is discussed in the Supreme Court of Georgia as late as 1868 in *Chancely v. Cleveland*.<sup>1</sup> The Court (Warner, C. J., and Walker, J.) held in a suit on a note given in consideration of the service of the payee as a substitute in the Confederate army, that the consideration was illegal and the note void; Harris, J., dissenting. Judge Warner argued at length and decided that under the constitution there was no right of secession and that the Confederacy was in all respects an unlawful organization. He goes back into history, but he does not notice the conflicting opinions and conclusions so ably put forth by Judge Benning in the *Padelford* case.

At the October Term 1872<sup>2</sup>, the Supreme Court of the United States unanimously reversed a judgment of the Supreme Court of Georgia<sup>3</sup> and held that the Georgia statute of 1870, denying plaintiffs the aid of the courts in collecting their debts, old or new, until taxes thereon had been paid for each year, was an effort to impair the obligation of a contract. A similar case came before the Supreme Court of Georgia in 1873<sup>4</sup> and Warner, C. J., and Trippe, J., acquiesced in the finding of the Federal Court and held accordingly. McCay, J., vigorously dissented, on the ground that the Federal Supreme Court had not adopted, as it was bound to do, the State Court's construction (that it was only necessary for a plaintiff to have paid the taxes at some time prior to the filing of his suit, and that he had full opportunity to do so after the passage of the statute) but had construed it as though failure to pay in former years was itself a complete bar to recovery and an irreme-

<sup>1</sup> 37 Ga., 582.

<sup>2</sup> *Walker v. Whitehead*, 16 Wall. 814.

<sup>3</sup> 43 Ga., 553.

<sup>4</sup> *Mitchell v. Cothrans*, 49. Ga., 125.

diable bar. He voted to adhere to the State Court's former ruling until the question was properly presented to the Federal Court.<sup>1</sup>

Up to the end of the Civil War there had been but one case from the state courts of Georgia reversed by the Supreme Court of the United States under the Twenty-fifth Section of the Judiciary Act, and that was the Worcester Case, which was ignored and disregarded. At the June Term 1869 the Supreme Court of Georgia, Warner, J., dissenting, held that no judgment could be rendered on a debt, the consideration of which was a slave, or slaves, or the hire thereof.<sup>2</sup> The Supreme Court of the United States, at the December Term 1871, reversed this judgment, holding the note to be good.<sup>3</sup> From this it appears that not until the lapse of 82 years after the adoption of the Constitution and the passage of the Judiciary Act did Georgia recognize this appellate jurisdiction. Until then no judgment of the courts of Georgia was in fact successfully reversed by the Supreme Court of the United States. Apparently between the Worcester Case in 1832 and the White Case in 1869 no Georgia lawyer had ventured to invoke the twenty-fifth section, and there had therefore been neither reversal nor affirmance in any Georgia case. Meanwhile there had been several hundred from other states.<sup>4</sup>

<sup>1</sup> This dissent was not a refusal to acknowledge *in the same case* the mandate of reversal issued by the Supreme Court, but comes close to it. His criticisms of the Supreme Court's opinion seem well founded. On the other hand, in reading the opinion in 48 Ga., one is impressed that they chose to ignore a clause of the Act of 1870 providing that taxes on the debt must have been regularly returned for each of the past years during which the evidence of indebtedness had been lawfully subject to return and assessment. The court below in construing the Georgia statute ignored one of its provisions, and the court above ignored the forcible construction given to it by the court below. The net result of these two ignorings was to annul a statute which seems clearly in conflict with the contract impairment clause.

<sup>2</sup> White v. Hart, 39 Ga., 306.

<sup>3</sup> White v. Hart, 13 Wall., 646. Chase, CJ., dissents (p. 663) on the ground that slavery is "against sound morals and natural justice", and makes the Thirteenth Amendment retroactive. He stands alone.

<sup>4</sup> Vide post, p. 128, note 1.

## CONFLICT IN VIRGINIA

Georgia did not begin the resistance to the appellate jurisdiction over State Courts. Virginia began it, and Georgia was followed by Ohio, California and Wisconsin. At the February Term 1816<sup>1</sup> it appeared that the Virginia Court of Appeals had unanimously refused to execute the Supreme Court's mandate of reversal in *Fairfax v. Hunter*<sup>2</sup> which had come up on the writ of error signed by the President of the Virginia Court, and in which jurisdiction had not been denied.

A second writ of error was sued out on this refusal and the Supreme Court was unanimous in upholding the jurisdiction. Story, J., delivered the opinion and Johnson, J., a concurring opinion. It is one of the few constitutional cases in which Marshall delivered no opinion. Carson says that it was Story's first constitutional judgment.<sup>3</sup> Possibly Marshall preferred that, in a contest with his own state, another should be the spokesman.<sup>4</sup>

<sup>1</sup> *Martin v. Hunter*, 1 Wheatt., 304.

<sup>2</sup> 7 Cranch., 603.

<sup>3</sup> Carson, 246.

<sup>4</sup> Says Judge Story: "It is an historical fact, that this exposition of the Constitution, extending its appellate power to state courts, was, previous to its adoption uniformly and publicly avowed by its friends, and admitted by its enemies, as the basis of their respective reasonings, both in and out of the state conventions. It is an historical fact, that at the time when the Judiciary Act was submitted to the deliberations of the first Congress, composed, as it was, not only of men of great learning and ability, but of men who had acted a principal part in framing, supporting, or opposing that constitution, the same exposition was explicitly declared and admitted by the friends and by the opponents of that system. It is an historical fact, that the Supreme Court of the United States, from time to time, sustained this appellate jurisdiction in a great variety of cases, brought from the tribunals of many of the most important States in the Union, and that no state tribunal has ever breathed a judicial doubt on the subject, or declined to obey the mandate of the Supreme Court, until the present occasion. This weight of contemporaneous exposition by all parties, this acquiescence of enlightened state courts, and these judicial decisions of the Supreme Court through so long a period do, as we think, place the doctrine upon a foundation of authority which cannot be shaken, without delivering over the subject to perpetual and irremediable doubts." (p. 352).

The two opinions in *Martin v. Hunter* occupy fifty pages of Wheaton's report and seem to cover the ground fully; but Virginia had not acquiesced. Let us see what had happened in the court below.<sup>1</sup> The record had gone to the Federal Court without discussion, and apparently without opposition, but when the mandate of reversal was filed there was trouble. The Reporter tells us in a footnote that, although the case was not the first in order of decision at the term reported, he inserts it first "because it is in all respects the most important and interesting case in the volume". The report also shows that the court had issued a general invitation to members of the bar to present their views on the motion to obey the mandate. There were two volunteers for state rights, but Federal jurisdiction had no champion except retained counsel. The conclusion that the Twenty-fifth Section was unconstitutional, and the resulting refusal to obey the mandate was unanimous; four judges delivering opinions. Those of Judges Cabell, Brooke and Fleming are without special interest, but Judge Spencer Roane's is full of fire. He is sarcastic in his condemnation of counsel for "exhorting this High Tribunal to divest itself of all improper prejudices", and warning them of the consequences of an adverse decision "in reference, principally, to the anarchical principles prevalent at the time of the argument" in a particular section of the Union (p. 26). He rejects *The Federalist* as an authority on the ground that its authors were active partisans of the Constitution (p. 27). He rejects all opinions "except so far as I may think them correct" (p. 29). He rejects the great mass of precedents in which the jurisdiction of the Federal Court had been tacitly recognized "because the cases occurred in *that* Court and not in this;— because the man, and not the lion, was the painter." (p. 51) He rejects acquiescence by other states on the ground that while they may abandon their own rights "they have no power to cede or relinquish ours" (p. 53). He finally concludes

<sup>1</sup> *Hunter v. Martin*, 4 Munford 1, April 1814.

(p. 54) that the Constitution confers no power upon the Federal Court "to meddle with the judgments of this Court," and that the mandate must be ignored.<sup>1</sup>

When the Supreme Court of the United States reversed the Virginia Court a second time it took no chances of further disobedience but exercised its privilege of final judgment, by itself affirming the judgment of the *District Court* which the Virginia Court of Appeals had reversed.<sup>2</sup>

The constitutionality of the Twenty-fifth Section came before the Supreme Court a second time in the leading case of *Cohens v. Virginia*.<sup>3</sup> On the motion to dismiss the writ of error for want of jurisdiction the Chief Justice delivered the unanimous opinion of the court and no other judges were heard. He states "that the uniform decisions of this Court on the point now under consideration, have been assented to, with a single exception\* by the Courts of every state in the union whose judgments have been revised. This concurrence of Statesman, of Legislators, and of Judges in the same construction of the Constitution, may

<sup>1</sup> Judge Roane, a son-in-law of Patrick Henry, had been in 1788 a leader in Virginia of opposition to the ratification of the Constitution. He was then, and notwithstanding his judicial office continued until his death, a prominent, active politician, said to be in absolute control of both the personnel and the legislation of the Virginia Legislature. He wrote political articles for the public press on this case and on *Cohens v. Virginia*, and other decisions of Marshall, who was the special object of his attack. It is said that the resignation of Chief Justice Ellsworth from Paris three or four months before the expiration of John Adams' term, and the appointment by Adams of Marshall after Jay's declination in the last days of his administration just before Jefferson's inauguration, brought great disappointment to Judge Roane, who was a strong friend and henchman of Jefferson. He was slated for the Chief Justiceship and his failure to fill Marshall's seat may account in part for the bitterness of his statements. (Chief Justice Marshall and Virginia 1813-1821, by Wm. E. Dodd, 12 Am. Hist. Review (1907) 776).

\* *Martin v. Hunter*, 1 Wheat., 304,362.

\* 6 Wheat., 264 (1821).

\* Evidently *Martin v. Hunter*, 4 Munford 1.

justly inspire some confidence in that construction."<sup>1</sup>

The motion to dismiss was denied, the case was argued on its merits, and Cohens (convicted in the State Court of a petty offense), whose successful insistence on his right of appeal is responsible for this leading case, lost.

#### CALIFORNIA

Judicial defiance of Federal jurisdiction was not confined to any one section. California joined Georgia and Virginia, and Wisconsin went much farther than any of her sister states. The Chief Justice of Ohio tried to follow their example but was over-ruled by his associates.

At the October Term 1854 of the Supreme Court of California in the case reported as *Johnson v. Gordon*<sup>2</sup>, there came up two questions: (1) refusal of the court below to remove to the Federal Court a suit against an alien defendant; and (2) application for a writ of error to the Supreme Court of the United States in a case involving the rights of navigation in San Francisco Bay, in which the court below had decided that the State had full and complete control.<sup>3</sup> The three judges were unanimous in retaining jurisdiction of the alien's case (holding the Removal Act to be unconstitutional) and in denying the application for writ of error on the ground that attempt to confer such jurisdiction on the Federal Supreme Court was not justified by the Constitution.

There was but one opinion, in which the usual arguments

<sup>1</sup> Carson (pp. 247-8) says that the decision in *Cohens v. Virginia* "has always been acquiesced in by the country since that time." It was after this date that Georgia, by direction of her General Assembly, responded in 1830, 1831 and 1834 to writs of error to her courts from the Supreme Court in three criminal cases by hanging two of the defendants as being a simpler and more expeditious response than transmitting the record; and in the third case, the record having been inadvertently transmitted by the clerk, held the defendants in the penitentiary after the Supreme Court had ordered their discharge. It was long after this that California in 1854 and Wisconsin in 1855 and 1859 vigorously and stubbornly denied the jurisdiction and refused obedience.

<sup>2</sup> 4 Cal. 368.

<sup>3</sup> *Eldridge v. Cowell*, 4 Cal. 81.

were stated in judicial language, with a handsome tribute to the high character and ability of the Supreme Court. This case was afterwards over-ruled by the same court in *Ferris v. Coover*<sup>1</sup> with a simple statement that the jurisdiction of the Federal Court in such cases was too well established to admit of doubt.

## OHIO

In *Piqua Bank v. Knoup*<sup>2</sup> the Federal Supreme Court reversed an Ohio judgment in a case involving taxation of banks and the contract impairment clause. The motion to make the mandate the judgment of the lower court came up in 1856.<sup>3</sup> One judge was disqualified, three were for the motion, but Barclay, C. J., filed a dissent of 105 pages. This opinion is unique in that it cites *Padelford v. Savannah*, though very briefly and not very strenuously, as authority for his position that the Twenty-fifth Section is unconstitutional. (*ante* p. 113). As this is only a dissenting opinion, though a very vigorous one, further notice is unnecessary.

## WISCONSIN

The most interesting, the most extreme, and the most illustrative of all the cases of judicial conflict are the Booth cases growing out of the attempt to enforce the fugitive slave law in Wisconsin in 1854.<sup>4</sup>

Ableman was the United States Marshal in Wisconsin. Glover was claimed as a slave under the fugitive slave law, and Booth was an editor of an extreme abolition paper. Booth was arrested on a warrant issued by a United States Commissioner under the fugitive slave law for obstructing the marshal in the arrest of Glover, the alleged

<sup>1</sup> 11 Cal. 175.

<sup>2</sup> 16 How. 369.

<sup>3</sup> 6 Ohio State 342-448. (1856).

<sup>4</sup> In *Re Booth*, 3 Wis. 1; *Ex Parte Booth*, 3 Wis. 145; In *Re Booth & Raycroft*, 3 Wis. 157; *Ableman v. Booth and U. S. v. Booth*, 11 Wis. 498, Dec. (1859); In *re Tarble*, 25 Wis. 390, 3rd Am. Rep. 88 (1870); *Ableman v. Booth*, 21 How. 506, (1858); *Tarble's Case*, 13 Wall. 397.

fugitive slave. He sued out a writ of *habeas corpus* before Mr. Justice Abram D. Smith of the Supreme Court of Wisconsin, who discharged him, and on appeal to the Supreme Court of Wisconsin the decision was unanimously affirmed; each Justice, including Smith, J., delivering an opinion.<sup>1</sup>

Then Booth was indicted and again arrested. His effort for discharge in the second case was unsuccessful on the ground that, until the contrary was demonstrated, the State Court must allow the Federal Court to consider the question of its own jurisdiction, as there was a legal presumption that it might reach a correct conclusion! Booth was then tried, convicted, sentenced and imprisoned, and a third time he resorted to *habeas corpus*. In this third case, the court was unanimous, all agreeing that the Federal Court which had tried him and convicted him, was without jurisdiction, and that it was their duty to save him from this unconstitutional persecution.

Ableman obtained from the Federal Supreme Court a writ of error, and by order of the State Court the clerk refused to furnish the record. The Supreme Court was not, however, thus deprived of jurisdiction, and on motion of the Attorney General it permitted him to file another copy of the record otherwise obtained, considered the case, and unanimously reversed it on the ground that the constitutionality of the fugitive slave law was affirmatively settled, that the jurisdiction of the Federal Courts within their

<sup>1</sup> 3 Wis. 157. Two of them were of opinion that the fugitive slave law was unconstitutional, but Crawford, J., while dissenting in this, concurs in the discharge because the warrant was issued only by a Commissioner. All the decisions of the Federal Courts on the fugitive slave law, and particularly *Prigg v. Pennsylvania* (16 Peters 539) cited as "the beginning of our troubles," are severely criticised, and Smith J., states that if the United States would let the subject alone and leave it to states where it belongs, peace and law and order would be restored. He winds up his opinion with an oratorical conclusion.

constitutional sphere was supreme, and that State courts could not interfere with it.<sup>1</sup>

The mandate of the Federal Court came back to the Supreme Court of Wisconsin in September 1859 on a motion by the United States Attorney to file the mandate and make it the judgment of the State Court. He contented himself with making the motion. He did not argue it. Meanwhile the former Chief Justice Whiton had died and was succeeded by Luther S. Dixon. Byron Paine, who had been counsel for Booth, had come to this bench, and the third judge was new. The personnel of the Court was completely changed. Paine, J., was disqualified. Dixon C.J., recognized the lawful force of the mandate, but Cole, J., disagreed with him. Thus by a divided court the motion, which required affirmative action, was lost. Dixon C.J., delivered an opinion, subsequently filing as a part of it "an argument from the pen of an able and eminent member of the Milwaukee Bar" published in a newspaper, which had also been extensively circulated in the form of a pamphlet.\* Cole, J., delivered no opinion, but the Reporter compiled and published as an appendix to the report (*ibid.* 532) a note "from sundry articles which appeared in the Free Democrat (Booth's own paper) about the time of the filing of the opinion in this case."

Light on the atmosphere in which the opinions were delivered is shown by the Chief Justice's liberal use of quotation marks in referring to such positive or negative influences as the horrors of consolidation; the despotism of dissolution and anarchy; dignified judicial subordination; hoary usurpation of power and jurisdiction; time honored encroachments on the reserved rights of the sovereign states. Except for his filing of the argument from

<sup>1</sup> *Ableman v. Booth*, 21 How. 506 (1858).

\* 11 Wis. 522.

outside, his opinion is judicial in tone.<sup>1</sup>

In 1870 there was a *post mortem* over the remains of these Booth cases.<sup>2</sup> The Civil War had been fought and the issues were dead, but the acerbities engendered by them were not. The judges who sat when the mandate was rejected were still there and the issues before the court gave opportunity for reminiscent discussion of the Booth

<sup>1</sup> The outside argument filed by the Chief Justice is a monument of painstaking research. It cites every case which from the organization of the Supreme Court to date went up by writ of error from the State courts. There were then (1859) more than 220, of which 65 were dismissed for want of jurisdiction and 68 had been reversed, with acquiescence of the State Courts in all except one from Georgia and one from Wisconsin. He does not except Virginia because he cites two later cases from this state as showing acquiescence. Among other states he shows 16 such cases from Ohio, 5 from Virginia, and 4 from Wisconsin. Of the states which actually denied the jurisdiction California alone is absent from this compilation. He does not mention *Johnson v. Gordon*, (4 Cal. 368).

Through the courtesy of Mr. Gilson G. Glasier, Secretary of the Wisconsin Bar Association, I learn that the "able and eminent member of the Milwaukee bar" who compiled these cases was Edward G. Ryan, counsel for the Government in the Booth case, an Irish immigrant who afterward, in six years service as Chief Justice of Wisconsin, earned a reputation as one of the great judges of our country. He had previously made a reputation equally great, though not so wide, as an advocate (*Appleton's Cyc. of Amer. Biog.* V, 359). That his ignorance of all the facts should have led him to such unjust charges in his "note" against Georgia's Indian policy is deeply regretted.

From Mr. Glasier I also learn that the author of the note supporting Judge Cole's opinion was Judge Paine, former counsel for Booth and disqualified in the case. The reporter who appended it was former Justice Smith who was the first to release Booth from federal custody (3 Wis. 1).

In 1880 there was a reprint of Wisconsin reports edited by Hon. Wm. F. Vilas and Edwin E. Bryant, who in a further note to the case in 11 Wis., tell us (Reprint, p. 517) that Booth was rearrested and imprisoned, failed by a divided court (Paine J., being disqualified) to procure a third discharge, served part of his sentence of imprisonment in the *Custom House*, had his property sold under a judgment for damages procured by Glover's owner (*Arnold v. Booth*, 14 Wis. 180), and was finally pardoned by President Buchanan.

As I close this paper I am informed that the story of the Booth case has been fully told by Chief Justice Winslow of Wisconsin in *The American Lawyer*, XIII (1905) pp. 275-7, 343-6.

<sup>2</sup> In *Re Tarble*, 25 Wis. 390. (1870).

Case. Paine J., who had been disqualified in Booth's Case, was not disqualified in Tarble's Case and he delivered an elaborate opinion severely criticising the Supreme Court of the United States for its decision in 21 Howard, and vigorously sustaining in detail the judgments of the Wisconsin Court which he as counsel—and doubtless an able one—had secured, with the accompanying opinions. He says of the Wisconsin decision that in the view of the Federal Court it was unusual and extraordinary, not in deciding the question "but that in exercising that power, it decided against the validity of a law passed to sustain the institution of slavery", and that this "so shocked the nerves of the venerable members of the Supreme Court" that they failed to perceive distinctly the real theory of the decision. In Tarble's Case the State Court discharged a soldier from the army, and was reversed in 13 Wall. 397, (1871) Chase, C.J., dissenting.

But this was not the only echo of the Booth Case. It is immediately followed by *Whiton v. C. & N. W. Ry.*,<sup>1</sup> where the Court, with the same division of the judges as in Tarble's Case, reversed an order of the lower court removing to the Federal Court a suit filed in the State Court by a non-resident plaintiff, the reversal being on the ground that the Act of Congress permitting removal by a plaintiff after he had elected to sue in the State Court, found no warrant in the Constitution. Dixon, C.J., dissents without opinion. This judgment was overruled in 13 Wall. 270, when the case, proceeding to judgment in the Circuit Court notwithstanding the opinion of the Supreme Court of Wisconsin, reached the Supreme Court of the United States. The fugitive slave law which had brought such extreme and bitter opposition to Federal control was gone. The bitterness remained. But this was fifty years ago!

#### MASSACHUSETTS

I have cited to you some judicial conflicts, which the

<sup>1</sup> 25 Wis., 424.

language of the judges justifies me in calling unseemly; and the language of the northwestern courts, induced by political opposition to the fugitive slave law, is more to be deplored than that of the southern courts, induced at least in part by their fear of further encroachments upon their right to maintain their "peculiar institution." There is a case in the Supreme Court of Massachusetts<sup>1</sup> under the fugitive slave law which shows a refreshing contrast. The opinion is delivered by her great Chief Justice Lemuel Shaw. There was a writ of *habeas corpus* for the discharge of Sims, arrested as a fugitive slave. Massachusetts was the headquarters and hotbed of abolition. The learned judge expresses *arguendo* his opposition to the institution of slavery, but after referring to the fact that the Constitution was a compromise and probably would not have been adopted without the provision as to fugitive slaves, he says, speaking for the unanimous court, "The principle of adhering to judicial precedent, especially that of the Supreme Court of the United States, in a case depending upon the Constitution and laws of the United States, and thus placed within their special and final jurisdiction, is absolutely necessary to the peace, union and harmonious action of the state and general governments. The preservation of both, with their full and entire powers, each in its proper sphere, was regarded by the framers of the Constitution, and has ever since been regarded, as essential to the peace, order and prosperity of all the United States."

The court was able to subordinate the political views of its members to its sense of judicial propriety and to bow to an authority which it could not conscientiously dispute. The writ was refused.

#### NEW YORK AND CONNECTICUT

The note filed by the Reporter in support of Cole J's., opinion in the Booth case in 11th Wisconsin erroneously

<sup>1</sup> Sim's Case, 7 Cushing 285, (1851).

cited a New York case and a Connecticut case as examples of refusal to comply with the Twenty-fifth Section. The citation is not justified.<sup>1</sup>

### CONFEDERATE CONSTITUTION

When the seceding states who had so long and so vigorously resisted encroachments of Federal power (and none had resisted so strenuously as Georgia) met in 1861 to draft a constitution for the Confederacy they were naturally guided by the lamp of experience. Using the United States Constitution as a basis, they sought by omission, insertion and amendment to avoid words, phrases, clauses and sentences which could be construed to confer upon the new government powers which they believed it should not acquire, or to take away from the states power which they believed they should retain. At the eighty-second annual

<sup>1</sup> In *Davis v. Packard* (7 Peters 276, 1833) the Federal Supreme Court reversed a judgment of the New York State Court on the ground that exclusive jurisdiction was given to the Federal Courts in the case of a foreign consul. In *Davis v. Packard* (11 Wen. 50) on a motion to make the mandate the judgment of the State Court, and therefore to reverse the court below, there was careful consideration by the "Court for the trial of Impeachments and the Correction of Errors" composed of judges and senators. Chancellor Walworth delivered the opinion, recognizing jurisdiction under the Twenty-fifth Section, but holding that the Federal Court had wrongfully assumed that the judgment of the New York Court had justified suit against the consul in the State Court, whereas it had really declined to reverse the court below because the record failed to show that he was a consul. Senator Seward delivered an elaborate dissenting opinion, but Chancellor Walworth's position was sustained by two judges and eighteen senators against three senators. That this was not a defiance of the Supreme Court appears from *Davis v. Packard* (8 Peters 312, 1834) in which the Supreme Court of the United States unanimously held that the action of the State Court on the mandate was correct.

There is a like error in the citation of *Palmer v. Allen* 1 Conn. 100. The mandate directed the Supreme Court of Connecticut "to enter judgment for the said appellant Palmer on the demurrer". On motion for such judgment the State Court held that it was not authorized by the laws of Connecticut establishing the court to enter a final judgment "but there will be no difficulty in carrying its object into effect." It reversed the former judgment of the lower state court, with instructions to proceed "conformably to the decision of the Supreme Court of the United States." There was not even a suggestion of disregard of the Federal Court.

meeting of the Georgia Historical Society (1921) the address of President Andrew J. Cobb gave an illuminating comparison of the United States Constitution and the Confederate Constitution.<sup>1</sup> While the new constitution expressly protected the states against the protective tariff, the use of Federal funds for internal improvements, interference with slavery, there were few material variations, and there is no evidence of any desire to limit in other respects the jurisdiction and power exercised for seventy-two years. The grant of judicial power in the two instruments is almost identical.<sup>2</sup>

We have no evidence of resistance by the States forming the new government, or even by the delegates from Georgia and Virginia, to appellate jurisdiction over the State Courts. On March 16, 1861, there was passed the Confederate Judiciary Act.<sup>3</sup> Its 45th section follows the 25th section of the United States Statute and retains the right of review which Georgia and Virginia had disputed. There are few differences. One is that there may be an appeal whether or not the decision below sustained the constitution. Another is that the Supreme Court may not proceed to a final decision and award execution unless "the case shall have once been remanded before"; which is merely giving to the State Court days of grace.

<sup>1</sup> Ga. Hist. Quarterly, V, No. 2, June 1921.

<sup>2</sup> In Article Three the judicial power of the Confederacy was not limited, as was the model, to cases "in law and equity", but included "all cases arising under this Constitution", etc. Suits between a State and citizens of another State were confined to cases where the State is the plaintiff. Federal jurisdiction of cases between citizens of different states was eliminated. The restriction of the Federal constitution, confining suits involving lands claimed under grants of different states to citizens of the same state, is removed by including all citizens. The cases between a State and its citizens and between a State and foreign States and subjects, are so restricted that no State shall be sued by a citizen or subject of any foreign State.

The line drawn between original and appellate jurisdiction of the Supreme Court is identical with the corresponding provision in the United States Constitution. (Confed. Stat.; Ga. Code, 1861).

<sup>3</sup> Confed. Stat. 84.

Another instance under the Confederacy of yielding traditional sentiment to the stern logic of practical government is noted in the Selective Draft Law Cases involving the constitutionality of the Selective Draft Law of 1917.<sup>1</sup> While the United States had passed a conscript law during the Civil War, its constitutionality had never come before the Supreme Court, but the conscript law of the Confederacy came many times before State Courts. The language of the two constitutions giving the power "to raise and support armies" was identical, and the Supreme Court of the United States in 1918 cites from State Courts in the South as authority for its finding that the Draft Law was constitutional, eleven cases involving the Confederate Conscript Law, of which four were from Georgia. Georgia even went so far as to hold that the Confederacy could conscript a citizen who was physically incapacitated for the field and use him for work of a less exacting character.<sup>2</sup>

Today it seems impossible that even reasonable uniformity of the Federal Constitution could have been secured, or that any semblance of judicial harmony could have prevailed, if the opinions and decisions of the State Courts involving constitutional construction had not been subject to review by one central tribunal whose opinion was binding on all. The constitution and the statutes of the Confederate States, promptly adopted by men all of whom represented the extreme state rights doctrine, present conclusive evidence of the wisdom and necessity of such a jurisdiction and of the determination of the Confederate delegates to be guided rather by the practical problems of effective government than by sentimental regard for prejudice engendered by bitter political contests. They were not politicians, but statesmen.

True it is that afterwards, when the Confederate Congress was proceeding to complete the organization of the

<sup>1</sup> *Arver v. U. S.*, 245 U. S., 366, 388.

<sup>2</sup> *Parker v. Kaughman*, 34 Ga., 146.

Confederate Supreme Court an effort was made to repeal this 45th section and an amendment to that effect was added by the Senate. But that was the end of it. The Confederate Supreme Court was never established, and we can only speculate on what would have been the fate of this amendment if the bill had been passed by the House and dehad come to the President for approval.<sup>1</sup>

### OUR CONSTITUTION

Great questions of American constitutional law involving the line of demarkation between Federal and State jurisdictions have been often said to be not legal but political questions. So many were settled before our time, either by judicial finding or by appeal to arms, that it is difficult for us to understand how closely in the early part of the century these questions were involved with the politics of the day, and how closely their decision affected the sectional interests of various parts of the country, and the personal interests of the individual.

Times have changed. Today the doctrine of state rights seems to be reserved for academic discussion and pre-election oratory. Federal statutes (enacted at least in large part by the votes of those who earnestly proclaim the doctrine of state rights and earnestly condemn encroachment of the Federal Government) regulate the transportation system of the country in all its tariffs and practices, in its hours of labor, in its rate of wages, in its liability to its employees, in its purchase of materials, in its responsibility to shippers on most of its business, in the issue of

<sup>1</sup> Brummer, 712. The author attributes the failure of the bill in the House to opposition to the expected appointment of John A. Campbell as Chief Justice. Judge Campbell was a native of Georgia, served many years as a Justice of the Supreme Court, resigned in 1861, and faithfully served the Confederacy in the war department. The other native Georgian on that bench, James M. Wayne, did not resign in 1861, but remained on the bench until his death in 1867 after thirty-two years of service.

Failure to interpolate the word "expressly" in the Tenth Amendment is noted, *ante* p. 106.

securities, in the construction or abandonment of new or existing lines. A Federal statute limits and restrains the sale of narcotics over the counter at the corner drug store in a small town in Georgia—probably the greatest stretch we have yet seen of Federal jurisdiction under the Constitution. In spite of state rights, the states best known for their jealousy of state sovereignty and their resistance to expansion of Federal power were leaders in approval of the Eighteenth Amendment because they believed in prohibition; and were slow in approval of the Nineteenth Amendment, not because of state rights, but because they are not yet converted to woman suffrage.

Thomas Jefferson was the great apostle of strict construction, but in the most important act of his administration his constitutional views were no obstacle. He thought that the Constitution gave authority neither for the purchase of Louisiana nor for its government when acquired. He nevertheless purchased it and established in it an arbitrary government. He set an example for all time. Rare indeed are the cases in which the Constitution has stood in the way of accomplishing anything which was generally approved by public sentiment.

With the exceptions noted, I find no sign of judicial conflict after the great constitutional questions which caused them had been settled by wager of battle. Such unfortunate clashes as have been depicted are now forever impossible. But they had to come, and they had to be settled. Our great experiment of 1789 had many features entirely new and radical in their boldness, but none more so than the creation of one Supreme Tribunal to expound and interpret an instrument which created a nation, to settle vital controversies between independent Sovereigns, not as arbitrators entering awards, but as a court entering judgments. Thirteen Sovereigns surrendered *some* important functions of their sovereignty to a fourteenth which they created for the purpose of exercising these functions for the joint use of all; and the jealous guardianship by them of what they

had retained was to be expected. We should wonder not that the conflicts occurred, but that settlement of all the great underlying principles of complex relations never before tried in the long history of man took but little more than two generations. This is indeed a brief span in the evolution of government!

Washington, equally great in peace and in war, was President of the Convention which gave us our Constitution. I have seen no better exposition of its structure, no better expression of the spirit in which we should accept it and judge it, use and defend it, than the official letter of September 17, 1787, transmitting to Congress the original signed instrument, in which he says:

"It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all: Individuals entering into society, must give up a share of liberty to preserve the rest. \* \* \* The Constitution which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

"That it will meet the full and entire approbation of every state is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish."

As officers of the courts, commissioned to aid them in their deliberations, as members of a profession enjoying special privilege and owing special duty, as recognized leaders of public opinion on the vital questions involved, we of the bar can find no safer guide than this fine analytical expression of the spirit of the Convention. Read in the

light of four generations of history, they may even at this day serve us as a safe and sane Creed of the Constitution.

### AUTHORITIES CITED

Judicial reports of the United States and of the States and other law books are cited in their usual form.

**Arp, Bill.**

The Farm and the Fireside, by Charles H. Smith, ("Bill Arp") Atlanta, 1891.

**Beveridge.**

Life of John Marshall, by A. J. Beveridge, 4 Vol., Boston, 1916-19.

**Brummer.**

Judicial Interpretation of the Confederate Constitution, by Sidney D. Brummer, Ph. D., being No. V of "Studies in Southern History and Politics." New York, Columbia University Press, 1914.

**Carson.**

The Supreme Court of the United States, its History and its Centennial, by Hampton L. Carson, Philadelphia, 1891.

**Clayton.**

A compilation of the Laws of Georgia (1800-1810), by A. S. Clayton, Augusta, 1812.

**Confed. Stat.**

The Statutes at Large of the Provisional Government of the Confederate States of America, February 8, 1861 to its termination February 18, 1862. Edited by Jas. M. Matthews, Richmond, 1864.

**Doc. Hist. Const.**

Documentary History of the United States Constitution, Bureau of Rolls and Library, State Department Washington, 1894—1905, 5 Vols.

**Dudley.**

Reports of Decisions Superior Courts of Georgia, by G. M. Dudley, 1836.

**Ga. Bar Assn.**

Annual Reports of the Georgia Bar Association, 1883—1920, Vols. 1-37.

**Ga. Corr.**

Correspondence of Howell Cobb, Robert Toombs and Alexander H. Stephens. Edited by Ulrich B. Phillips, Ph.D. Vol II of Annual Report of American Historical Association for 1911. Washington 1913.

**Gilmer.**

Governor Gilmer's "Georgians." The full title is: "Sketches of some of the First Settlers of Upper Georgia, of the Cherokees, and of the Author," by George R. Gilmer. New York, Appleton, 1855.

**Harden.**

Life of George M. Troup, by Edward J. Harden. Savannah. 1859.

**Kennedy.**

Memoirs of The Life of William Wirt, by Jno. P. Kennedy, 2 Vols., 2nd Ed., Phila., 1860.

**Lumpkin.**

The Removal of the Cherokee Indians from Georgia, by Wilson Lumpkin. Privately printed Wormsloe 1907. 2 Vols. Dodd, Mead & Co. publishers.

**McMaster.**

A History of the People of the United States from the Revolution to the Civil War, by John Bach McMaster, 7 Vols., New York 1883-1910.

**Phillips.**

Georgia and State Rights. Annual Report of American Historical Association for 1901. Vlo. II., Washington 1902.

**Stimson.**

The American Constitution, by Frederick J. Stimson, New York 1908.

**Wright.**

General Officers of the Confederate Army, by Gen. Marcus J. Wright. New York 1911.

## PUBLIC UTILITY REGULATION IN GEORGIA.

---

ADDRESS BY

C. MURPHEY CANDLER,

CHAIRMAN OF THE RAILROAD COMMISSION OF GEORGIA.

---

In honoring me with an invitation to address you on this occasion, your distinguished President also gave to me the subject for discussion.

Unfortunately, in so far as your entertainment is involved, he failed to furnish the address.

The consequences therefore rest on him.

The underlying principles in governmental regulation of public utilities are so long established and so universally recognized, that I am sure it would be a work of supererogation for me to discuss them before an association so well informed as this.

It is to be regretted, however, that the great mass of the public is not so informed, particularly as to the constitutional limitations within which that regulation must be exercised.

Public regulation is not public ownership. The power to regulate is not the power to destroy. Limitation is not confiscation. Privately owned property devoted to public uses is still private property, and the stockholders and bondholders, or individuals, who establish the enterprise and undertake the risk of its successful operation, cannot be deprived of the internal management of their properties, nor of a reasonable return, with competent management upon the fair value of that private property used in the service of the public, nor on the other hand can they exact

of the public, under any pretext, more than the value of the service rendered.

The problem is to reconcile public and private rights without undue subordination of the one to the other.

The regulatory agency in maintaining a delicate and even balance between these two poles of essential right has a responsible and difficult undertaking. The range of inquiry, it has been well said, between excessive charge on the one side and a fair return on the other, is a "no man's land," and whosoever ventures there to adjust these delicate balances, whether court or commission, frequently returns bearing the scars of criticism, seldom the meed of praise.

The exercise of a sound judgment as to the sufficiency or adequacy of a public service, is frequently hindered and beclouded by the selfish contentions of the utility or the unreasonable demands of an unthinking and uninformed public, so that it is frequently as difficult to do the right as to ascertain the right.

I have said that the principles underlying governmental regulation of public utilities were long established.

This power to regulate, however, has always been recognized as a legislative power, and until comparatively recent times, in this country at least, has been directly exercised by the legislative departments of government.

Under our State Constitution of 1877, as you are aware, this power was expressly conferred on the General Assembly, "whose duty it shall be to pass laws from time to time" to regulate rates, prevent unjust and unreasonable charges and to prohibit unjust discriminations.

This provision specifically related to railroads, and there is in our constitution no such express mandate as to other utilities.

That private property, however, when devoted to public use becomes subject to public regulation, was an early rule of the common law.

Lord Chief Justice Hale announced this principle more

than two centuries ago and from time immemorial it has been customary in England, and in this country since its colonization, to regulate the charges of warehousemen, hackmen, millers, bakers, etc., as well as common carriers.

While not the first, Georgia was among the first of the States to realize the difficulties in the regulation of rates, particularly, by direct legislative action, and in 1879, created the Railroad Commission of Georgia, as an administrative agency of the Legislature, conferring upon it *quasi* legislative functions to the extent necessary to make effective the constitutional mandate as to just and reasonable charges for the transportation by railroads, of freight and passengers and the prohibition of unjust discriminations.

The creation of such an agency, with *quasi* legislative functions, was not only wise, but all experience since, has shown was essentially necessary, because of the complexities of modern transportation and the conflicting interests involved therein, requiring in regulation a large degree of flexibility.

Since 1879 the General Assembly has, from time to time, enlarged the powers and added to the duties of the Commission, placing under its jurisdiction other public utilities, until now practically all public service corporations in the State, their practices, services and rates, are under the supervision and regulation of this body. These number more than 250 with property investments in the State in excess of \$350,000,000 and gross revenues of approximately \$145,000,000 annually.

They pay taxes, to all jurisdictions of approximately \$4,650,000 per annum.

The magnitude of the interests under the jurisdiction of the State Commission is at once seen.

The responsibility of the Commission is correspondingly great. An improvident order can destroy millions of dollars of property values or work incalculable harm and inconvenience to the public to whose use this property has been dedicated.

For the purposes of the present discussion the utilities

under the jurisdiction of the Commission may be divided into two general classes, to-wit:

1. Common Carriers (other than local) such as railroads, express and telegraph companies.
2. Local or community service corporations, such as electric street railroad, light and power companies, gas companies, compress companies, etc.

The first class far transcends in importance; and ideal or fairly satisfactory supervision and regulation of public transportation agencies, is today as in the past, an unsolved problem.

If this problem was only state-wide: if it only affected Georgia for example, it would be different from what it is, or if it could be treated wholly within state lines, its solution would be less difficult.

After some years of observation, I have reached the conclusion that our mistake in the attack on the problem has been in treating it too largely as a local or state matter.

It is infinitely larger and wider.

This is an age of rapid transport and communication. Organized society depends upon the proper functioning of these agencies.

No state unit can live within itself, or on itself nor apart to itself. Nor can any nation or civilized country.

There must be facilities for the exchange of material products and of information.

If the transportation and communication agencies of this country were today utterly destroyed, and remained so for twenty-five years, this great political unit of the United States would split up into narrow sectional units and become a thing of history.

This country has been cemented into one great human and political entity by its transportation and communication agencies and facilities and will remain so only as long as they exist and function.

Its political existence as a nation, the prosperity of its people, their homogeneity and happiness, depend upon the

continued development and the perpetuation of these agencies, either as private enterprises under proper governmental regulation, or directly owned and operated by the national government and not state.

I shall not discuss government ownership and operation, but shall confine myself to only a few observations as to State and Federal regulation, with private ownership.

I would be less than frank if I did not state that after twelve years of observation and experience in dealing with the problems of governmental regulation, my views as to the efficiency and beneficent possibilities of our present system of dual regulation, have been modified.

I more than ever believe the problem is a national problem, and that if solved, the final solution must be the result of national treatment, rather than State—rather than State and national.

Commerce knows no state line. The proportion of it transported within state lines is comparatively small and to that extent only involved in the state regulation of transportation agencies, and this proportion must be so regulated as that the larger interests are not adversely affected.

In the Shreveport cases, the Federal Supreme Court said; "Wherever the *interstate* and *intrastate* transactions of carriers are so related that the government of one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the dominant and final rule." \* \* \* \* And then, "it is also to be noted

\* \* \* \* that the power to deal with the relation between the two kinds (inter and intra-state) of rates, as a relation, lies *exclusively* with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, *unless it simply follows the standard set by Federal authority.*" And again, "Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the free-

dom of movement of interstate traffic over their lines in accordance with terms which *it* establishes."

The Federal Transportation Act of 1920 puts the foregoing deliverances into statutory form, providing that when "there shall be brought in issue (before the Interstate Commerce Commission) any rate, fare, charge, classification, regulation or practice, made or imposed by authority of any State \* \* \* the same shall be inquired into by the Commission, and if the same are *in its* opinion, discriminatory or prejudicial as to interstate commerce, *it shall prescribe* the rate to be thereafter charged, which shall be observed by the carrier, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Under Georgia statutes the Railroad Commission of Georgia is required to prescribe just and reasonable rates as to traffic moving wholly between points within the State. The power to decide what are just and reasonable rates is vested exclusively in our Commission.

The Interstate Commerce Commission exercises like powers as to and over interstate rates.

I cannot think of an intrastate rate on any trunk line in Georgia, which does not bear a relation to interstate rates. Georgia is so situated and related to the immediately bordering states; commerce between Georgia and these is so interwoven, that it is impossible to make an independent Georgia intrastate schedule for any trunk line carrier operating within its borders, which varies up or down from their interstate rates without working discrimination.

The Interstate Commerce Commission is the exclusive judge of this relationship, so that the Georgia Commission must "rubber stamp" the interstate rates, or have its own state made rates disregarded and ignored. This has already taken place.

Issues arising out of this situation are now pending in the Supreme Court of the United States. Unless this Court reverses its Shreveport decisions, the Transportation Act

of 1920 will be upheld and the powers of the State to prescribe intrastate rates practically nullified.

I am not criticising the course of events nor questioning the soundness of the principles announced. I am simply trying to state the situation because it emphasizes the apparently inevitable conclusion that state regulation of national agencies, is now of uncertain and limited extent, and more than likely to be completely nullified.

Our forefathers who constituted the Railroad Commission of this State as first organized, early and clearly apprehended the difficulties of handling the intrastate situation because of its relation to the interstate problem. I quote from their 1881 report, made after they had faced the problem for less than two years:

"The modifications (in one of its rules as to competitive rates) we were compelled to make arose from the fact that the Legislature of Georgia could only control the railroads within her own borders. Of course, it could not interfere with business without her limits, though needing a like control. The coöperation of the contiguous States, and even of States beyond them, is necessary to complete the beneficial action of the rule. Such coöperation of a properly harmonious character it is almost impossible to obtain. The States and their special interests are too numerous, and either too conflicting in fact, or supposed to be so, to make it at all probable that they can concur in the same exact policy. It is possible that that feature of the United States Constitution by which Congress is empowered to regulate commerce between the State, will have to be invoked, as a necessary and proper means of effecting this object of common and harmonious action. The efforts of any State are necessarily cramped by its territorial limits: and yet just here it is that the strongest safe guards are needed

\* \* \* \* \*

"Perhaps the exercise of this Federal power, distinctly granted for such purposes in the Constitution, can alone supply the needed protection, and certainly the reasons for inter-

state regulation are in a manifold degree greater now than when the Constitution was framed. \* \* \* \*

"If the constitutional power is so invoked, then a Federal Railroad Commission would seem to be indicated as the proper solution."

This suggestion and advocacy of a Federal Commission, it is interesting to note, was made six years before the Interstate Commerce Commission was created by Congress.

The further suggestion was that this exercise of Federal power through a commission ought not to conflict with State rights, but on the contrary coöperate with and supplement them.

As a theory this is absolutely sound, but we cannot shut our eyes to the fact that it is not today adhered to in practice.

I do not believe our dual system of Federal and State regulation has been completely successful, or so successful as not to justify, really demand radical amendment, if not abandonment, could one regulatory authority be constitutionally established.

I do not favor one sole authority domiciled at and acting from Washington, but my thought has been of a supreme appellate authority at Washington, intermediate regional authorities and local or local group authorities with original jurisdiction within State lines or small State or sectional groups. This may be in view of constitutional limitations, an impossible theory, but as a theory it has long been attractive to me.

The second class of utilities over which our Railroad Commission has jurisdiction is constituted, as I have assigned them, of local or community service corporations, such as street railroads, electric light and power companies and gas companies. With these utilities there is no question of dual regulation, as between the State and strictly local authorities.

I believe, as you must have gathered from what I have said already, in exclusive regulation by one authority. I

do not believe it is possible for a servant to always satisfactorily serve under two masters.

I believe it is to the interest of the public, as well as the utilities, that regulatory powers should be exercised free from local influences, by a State Commission, entirely disinterested in local politics, or any other politics for that matter. It is for similar reasons that I believe the members of the Railroad Commission should be appointed by the Governor.

So long as public servants are human, there is too much temptation to abdicate exclusive functions to a referendum, as they may guess as to public opinion. It is no reflection on the intelligence or honesty of the public to state that it is absolutely impossible for it to prescribe by popular vote the rates to be charged for serving it. And yet the problem of local utility rate making is comparatively simple.

Our present day civilization must have the services of such utilities as transportation, light, power, gas, etc. They must be built and operated by the taxpayers, or as private enterprises. If the latter there must be the reasonable assurance of a fair return to the owners of the enterprises. Without such return there will be poor service or no service by private enterprise.

The public demands and should have good service. In normal times and under normal conditions I think I may say from a long experience, the public is willing to pay its servants a fair wage, but in times like the present, when world conditions seem topsy turvy, when demagogues and noisy, irresponsible hucksters of alleged public opinion bray from every soap box and yellow journals from box letter front pages, the honest public is sometimes led into cruel and unjust denunciation of commissions and an unwillingness to give a just wage to those who serve night and day, rain or shine, year in and year out.

Since early in 1916 until late in 1920 the operating expenses of every utility in this State steadily increased with no corresponding increases in rates.

Since early in 1917 nearly all of them have been to the Commission with one or more applications for relief.

With the first of these applications the Railroad Commission, and I speak of it as a unit and not as to its individual members, adopted the policy of holding every increase granted down to the most meagre return which it believed could be sustained in the courts should appeals be carried there.

This policy was based upon the thought and hope, especially after 1918, that conditions were abnormal, of uncertain duration and liable to change at any time and quickly.

The Commission felt that it was wise to retain some control over the rate situation, and advance rates, when shown to be necessary, by steps rather than leaps, especially in view of the time required in a rate inquiry and the fact that reductions in rates are always more or less slow and at all times stoutly resisted..

The utilities were therefore, in effect told to go ahead with the minimum increase granted, try out the prescribed rates and report results monthly to the Commission, when if from actual application they were found to be unreasonably low, the Commission would examine into the situation again.

The records of the Commission will show that in only a few instances under exceptional circumstances, has any utility received the increases it asked and in most cases sustained with irrefuted proof.

The policy adopted by the Commission and consistently followed, with the persistent increases in labor and material costs resulted in second and in a few instances, third applications for relief.

Many of these last applications have been denied, but without much public notice.

During the past six months there has been much criticism, some of it unparliamentary, of the Commission and the justice and reasonableness of the increases granted.

As a public official I have no protest to register against

legitimate criticism. I sincerely welcome constructive, helpful criticism and try to get benefit from such.

I recognize the fact that sometimes the very atmosphere about human activities is such as to provoke criticism of a whole lot of things, even scolding and a little cussing.

During the past twelve months cotton, our principal farm product has slumped tremendously in selling price. The purchasing power of by far the largest class of our population has been reduced to almost nil. Our manufacturers and merchants were caught with large stocks of high priced materials and expensive merchandise in shop and store, unable to sell their products and goods at cost, and unable without causing distress to collect for such sales as had been made in the spring.

Business in Georgia, as elsewhere, came to a halt and stagnation palled. Business forgot the months and years of high tidal plenty, of unrestrained and unregulated profit, of liberal expenditures to gratify every need or fancy, and criticism of every increase in the cost of living became common.

It was a psychological resultant. It was natural; it was most human.

Patrons of the public utility at once said we are making nothing: many of us are actually losing money and are only "carrying on" in order to keep our business and organizations together till the dawn of better days. Why should the utility be allowed, now, an increase in rates? Why should it not share losses with the general public?

The Commission heard these arguments week after week, over and over again. Some of us who have business interests which are sharing the common lot, had, as individuals, a vast deal of sympathy with the suggestions thus urged.

The argument, however, was properly one to be addressed only to the altruistic or the philanthropist. It could have been well laid at the door of the owners of these utilities, but the Railroad Commission was utterly without power or the sanction of law, to enforce it in regulatory practice.

Private property, as I have said, even though devoted to public use, remains private property. Its owners have certain constitutional rights. No legislature, court or commission can deny or lessen these rights. The members of the Railroad Commission are under oath to respect them.

The Commission has in every instance held the valuation of utility properties to the lowest possible figures, consistent with well defined principles as to values for rate making. We have based rates on these values, never on capitalization, not even in one instance. The returns on these minimum values estimated under the prescribed rates have been kept at figures only short of denial of what is reasonable. I venture the assertion that we have made more mistakes in low rates than in unreasonably high rates.

We have followed this course in spite of the certain knowledge that during the recent years of plenty, even of abundance, when unregulated business came into its own, and some folks say into much that was not its own, these utilities had to content themselves with pre-war rates and charges increased only ten or twenty or possibly thirty per cent in some instances.

I know of Georgia newspapers which increased their street sales prices one hundred and fifty per cent and more, and still enjoy the increase notwithstanding the "downward trend of prices" on paper.

The Commission has been and is more intent on keeping these necessary utilities going and able to serve the public efficiently and adequately, with rates that would meet operating expenses, taxes and depreciation, than it was in providing such reasonable returns as under the law they have the right to demand, even in times of depression.

Under modern conditions of social and business life their services are no longer mere conveniences, they are necessities. For three years or more there have been no substitute services obtainable by the public at a lower, if as low a cost as these essential services rendered by these various utilities.

It is unfortunately true that the overwhelming bulk of

the capital now invested in utilities in Georgia is from outside state sources. Our home capital is limited. It has never been so abundant that it was not needed in private business, nor so scant of earning power that it was willing to seek investment in six or seven per cent earning utilities subject to governmental regulation.

We have had to rely on outside capital for the development of public service enterprises. There is still need of such capital.

It should receive fair treatment. The Railroad Commission has not been willing to deny it this treatment so long as it honestly serves the public.

It is not easy to make bricks without straw.

The State has placed upon the Commission heavy duties. Their intelligent discharge, where rates are involved, requires information and facts best obtainable through expert and technical inquiry. Our Commission has never been furnished with an engineer, an accountant or an inspector, nor funds for the regular employment of such. Our regular annual appropriation provides for the employment only of a secretary, a rate expert and one stenographer. We haven't a clerk even for filing the hundreds of tariffs filed with the Commission under the requirements of law.

During the past three years or more, in which rate increase applications have been numerous, the Commission has with its very limited force, laboriously striven to arrive at the truth and do justice alike to the public and the utility. No public official finds any degree of pleasure or comfort in placing upon the public the burden of any increase in rates, and I doubt if during these last few years the Railroad Commission of Georgia has prescribed a schedule which in its entirety, under the law, would be held by the courts to be unreasonable and unjust insofar as the public was concerned.

During this period of political upheaval, of industrial depression and social unrest, the work of the Commission has been made more difficult by the sometimes unreasonably

harsh criticism of some, and unscrupulous and slanderous denunciation by a few in certain communities.

No five men in existence can do their best work when under constant nagging and vituperation.

This has gone to an extent and been given such widespread publicity, that in localities a lack of confidence in the official integrity of members of this Commission has been engendered.

This, in my opinion, is only a form of lawlessness. The interests, whether political or merely selfish, which discredit the integrity of one department of the government through constant press propaganda, can undermine a second and a third until, if unrebuked, that form of lawlessness existing in disrespect for constituted authority, will overturn an entire government.

If insinuations which have been made have any basis of fact, our laws provide the method by which unworthy, incompetent or corrupt public officials may be speedily removed from office.

Mr. President, may I, in conclusion, be permitted a more personal word.

Men of my family connections have served Georgia, in peace and in war, for nearly a hundred and fifty years.

For nearly twenty-five years I have humbly served my State, in the General Assembly and on the Railroad Commission, called to this service by a vote of the people.

I have honestly striven to emulate the example of my forefathers by giving, without thought of pay, to the people and the State I love, the best service of which I was capable.

During these years of service there arose many momentous issues, in the solution of which it became my duty to participate in an humble way.

Only last year, I, with four colleagues, was honorably discharged by the General Assembly from an arduous duty of four years in the releasing of the State's railroad property,

for a consideration of over \$30,000,000, without a dollar of compensation nor the expectation of any.

During my legislative service I participated actively in the enactment of legislation affecting the taxation of corporations, the termination of convict leasing by the State and the banishment of the liquor traffic from Georgia.

It was frequently intimated in those days that undue influences were now and then brought to bear in some directions.

It has been known to my personal friends for two years or more that it was my purpose not to be a candidate for re-election upon the expiration of my present term.

No human being ever approached me during these twenty-five years with the remotest suggestion of reward or punishment, favor or threat, and it has pained me inexpressibly at the near close of these years of honest efforts at service, to become the subject of contemptible insinuation. I cannot answer these things through the medium in which they are circulated. I think too much of the dignity of my office and my own self-respect to enter into any newspaper controversy for the vindication of my character or integrity.

I have made mistakes—my colleagues have— all of you have.

There has never been a time when I did not have manhood enough to correct them when shown to me. And there has not been, and so long as God gives me life and strength, there never will be a time when I can be intimidated or cajoled from doing what the law, my oath of office and my conscience point to as duty.

I thank you gentlemen of the Georgia bar for your gracious invitation to speak to you today, extended through your honored President, my college class-mate and my much beloved friend since.

THE HISTORY OF GEORGIA IN THE  
EIGHTEENTH CENTURY, AS RE-  
CORDED IN THE REPORTS  
OF THE GEORGIA BAR  
ASSOCIATION

---

COMPILED BY  
ORVILLE A. PARK,  
OF MACON.

---

In his address as President of this Association (1889) Walter B. Hill called attention to the new literature coming into existence through the instrumentality of the bar associations of the several States—"a literature," which he characterized as, "of great value, and thoroughly creditable to the associated effort which has led to its development"<sup>1</sup> Ten years later, having become in the meantime the great Chancellor of the University, he said:

"More important than any single utility of the Association has been the creation of a new species of legal literature. No member of the Association can fail to contemplate with pride the eighteen volumes of the reports of its proceedings. These reports are most highly esteemed and are greatly sought in other States. They contain monographs on legal topics, and valuable contributions to legal history, to the discussion of public questions, and to the literature of the law"<sup>2</sup>

Having served the Association in an official capacity for more than half of its thirty-eight years of life and on that account being especially conversant with its reports, the Executive Committee has asked me to prepare a paper on the Association's literature. To attempt to discuss it all, even in the briefest way, is entirely beyond the limits of a single paper. I have therefore chosen as the particular topic to present for your consideration the history of Georgia as record-

ed in the reports, and for two reasons: First, because in no field has the literature of the Association been of greater interest or of more lasting value; and second, because this valuable historical material is in large part unavailable and practically lost, scattered as it is through thirty-eight annual reports (several of which are out of print), in addresses, papers and the reports of committees, unindexed and well nigh forgotten.

Of course the Bar Association historians have been largely interested in the constitutional and legal history of the state and its military and political history are only alluded to incidentally. And each one has written on some particular topic rather than on a period of time. Some incidents or some phases of the history may be given undue emphasis or treatment out of proportion to their importance, while other and mayhap more important matters may be passed over with but scant notice. Yet I do assert that a very fair history of Georgia has been written and recorded in the annual reports of the Georgia Bar Association, and much of the legal history of the state is better told in these reports than anywhere else.

When I had collected this historical material together I confess I was amazed at its scope, its volume, and its richness. I soon discovered it would be impossible to use it all, and therefore decided to confine this paper to the first sixty-seven years, from the founding of the Colony to the end of the century.

It has seemed best to let these Association historians tell their own stories in their own language rather than to use the material which, with so much painstaking care, they have laboriously gathered, in the preparation of a new and an independent history.

The plan adopted is after the manner of the "Historians' History of the World"—extracts from different authors being put together to form something of a connected whole. Of course the story is not so smoothly told by the

lips of many as if one only had spoken. But under the plan adopted the identity of each writer is preserved—each tells his own story in his own way.

Thirty-six different papers, addresses and monographs have been used in the compilation. From some of them only a paragraph, perhaps only a sentence or two, is taken, while others are used almost bodily. On some of the topics only one author has written, while in other sections almost every paragraph is taken from a different paper.

In order not to break into the thread of the story quotation marks are not used and the names of the authors and references to their papers are omitted. Following each extract, however, and all are quoted almost literally, is an Arabic numeral referring to a table at the end of the paper which gives the name of the author and of his paper with a reference to the Georgia Bar Association Report in which the paper may be found.

For convenience of reference, the paper being much longer than the usual Bar Association paper, a table of contents is inserted.

Macon, Ga.

September 1, 1921.

ORVILLE A. PARK

# CONTENTS

	Page
The Original Grants .....	158
The Charter of the Colony .....	159
The First Settlement .....	160
The Terms and Conditions of the Grants of Land .....	161
Oglethorpe's Treaties with the Indians .....	164
The First Conveyances .....	165
Restraints upon Alienation Removed .....	166
No Records of Laws Passed During This Period .....	168
The Town Court and its Jurisdiction .....	168
Bailiff Causton and the Lawyerless Court .....	170
No Lawyers but Much Litigation .....	176
Litigation with the Trustees in England .....	179
Georgia, A Royal Colony .....	181
The General Court and its Judges .....	183
The Practice of Law in the Colony .....	186
The Colony Divided into Parishes .....	189
The South Carolina Grants .....	189
The Form and Conditions of the Grants .....	190
Colonial Legislation .....	194
The Beginning of the Conflict .....	203
The Constitution of 1777 .....	207
The Revolution .....	214
The Judiciary, 1777-1800 .....	222
Some Eighteenth Century Judicial Proceedings .....	225
The Bar .....	232
Georgia Under the Articles of Confederation .....	235
The Head-Right System .....	237
The Status of Married Women .....	242
The Beaufort Convention .....	244
The Western Boundary .....	249
The Federal Constitution Ratified .....	250
The Constitution of 1789 .....	251
McGillivray and the Treaty of New York .....	254
Georgia v. Brailsford .....	255
Chisholm v. Georgia .....	257
Clark's Independent State .....	259
The Constitution of 1795 .....	267
The Yazoo Fraud .....	267
The Pine-Barren Speculations .....	275
The Constitution of 1798 .....	279
The Laws Compiled and Published .....	286
The Judiciary Act of 1799 .....	290

## GEORGIA IN THE EIGHTEENTH CENTURY

## THE ORIGINAL GRANTS

Georgia began its career as a trust estate; and the employment of a lawyer must have been among the first acts of the Board of Trustees, for, by reason of repeated and conflicting grants, the title to this wilderness was in such confusion that we can almost imagine an attorney making an examination of the various royal charters, and submitting to his clients something like a modern Abstract. It would show the original grant to Lord Raleigh; his attainder in 1603; the consequent forfeiture of this property to the Crown; then the actual grant from Charles I to Sir Robert Heath, which by reason of non-user, or failure to comply with conditions, was declared void; next, the grant by Charles II to the Lords Proprietors of South Carolina, who, in 1717, conveyed all of the land between the Savannah and the Altamaha to Sir Robert Montgomery, there to found a colony, bearing the bombastic name of "Margravate of Azilia."<sup>a</sup>

The grant was, however, to be void unless a settlement was effected within three years. And albeit Sir Robert devised a most marvellous scheme of settlement, and in his prospectus invited settlers on most liberal terms to come to this new Province, of which is herein set forth, "that nature hath not blessed the world with any tract which can be preferable to it; that Paradise, with all her virgin beauties, may be modestly supposed, at most, but equal to the native excellencies," this Eden remained unpeopled save by the savage. The grant expired and with it the "Margravate of Azilia."<sup>a</sup>

The estate again vested in the eight Lords Proprietors of South Carolina, seven of whom, in July 1726, sold their undivided seven-eighths interest to the king for the sum of 22,500 pounds sterling. (Watkins, 713.)

This Abstract showing the fee not to be in the Crown, the Trustees evidently decided to take what they could get, and a deed to this seven-eighths interest was made to them in July, 1731. Probably, in consideration of a grant by

the King to land in North Carolina, John, Baron Hawnes, Lord Carteret (afterwards Lord Granville), conveyed his interest to the Trustees on February 28, 1732, and thus the entire estate to this principality was vested in the Trustees of the Colony of Georgia for the space of twenty years.\*

#### THE CHARTER

With the motives and purposes inducing the settlement of the Colony of Georgia, it is not the province of this paper to deal. That its origin sprung from the great heart of General Oglethorpe, as its successful accomplishment was due to his genius for organization and government is a matter of history—a history but recently eloquently told by a distinguished member of our profession and of this body, (Chas. C. Jones) whose performance has left nothing unsaid or to be desired. The charter which is a fine specimen of the conveyancer's art, first recites the reason for the institution of the Colony, namely, to afford to impoverished persons an opportunity to earn in the free lands of the New World that livelihood which they could not find in the old; to strengthen the Southern Colonies of America, and especially to interpose a barrier to the repetition of the Indian ravages recently committed in South Carolina. For these ends it creates "Our trusty and well beloved John, Lord Viscount Percival, of our Kingdom of Ireland; our trusty and well beloved Edward Digby, George Carpenter, James Oglethorpe, George Weathcote, Thomas Tower, Robert Moor, Robert Wicks, Roger Holland, William Sloper, Francis Eyles, John Laroche, James Vernon, William Belitha, Esqrs., A. M.; John Burton, B. D.; Richard Bundy, A. M.; Arthur Bedford, A. M.; Samuel Smith, A. M.; Adam Adderson and Thomas Coram, gentlemen; their associates and successors a corporation by the name of 'The trustees for establishing the Colony of Georgia, in North America.'" It conveyed to the corporation "seven undivided parts, the whole in eight equal parts, to be divided, of all those lands, countries and territories lying and being in that part of South Carolina, in America, which lies from the

most northern part of a stream or river commonly called the Savannah, all along the sea coast to the southward, unto the most southern stream of a certain other great water or river called the Altamaha; and westerly from the heads of the said rivers respectively, in direct lines to the south seas, and all that shore, circuit and precinct of lands within the said boundaries, with the islands on the sea lying opposite to the eastern coast of the said lands, within twenty leagues of the same, which are not inhabited already, or settled by any authority derived from the Crown of Great Britain;"\* "with all the soils, grounds, ports, gulfs, bays, mines, as well royal mines of gold and silver as other mines, precious stones, quarries, woods, rivers, waters, fishings, as well royal fishings of whales and sturgeons as other fishings, pearls, commodities, jurisdictions, royalties, privileges and pre-eminences."\*

#### THE FIRST SETTLEMENT

The province was named "Georgia." Ample powers were given to the trustees for founding the Colony. They were to act through a common council, which could dispose of the lands of the Province at will; but as a check upon large estates, it was "Provided, also, that no greater quantity of lands be granted, either entirely or in parcels, to or for the use or in trust for any one person, than five hundred acres, and that all grants made contrary to the true intent and meaning hereof should be absolutely null and void."

On the 20th of July, 1732, the corporators met, accepted the charter, and proceeded to perfect an organization. So rapidly did matters progress, that on the 17th of November, 1732, Oglethorpe sailed with the first colony for Georgia, arriving at Charleston, in the province of South Carolina, on the 13th of January, 1733, where the colonists rested for a short period, while Oglethorpe went southward to choose the foundation for this new State. Leaving Charleston, after a voyage of three days, the colonists landed, on the first day of February, 1733, at Yamacraw Bluff. In the language of Georgia's latest historian, (Jones): "The ocean had been

crossed and the germ of a new colony was planted in America."

#### TERMS AND CONDITIONS OF THE GRANTS OF LAND

In order to facilitate the taking up of lands, the trustees had, on the 25th day of October, 1732, conveyed to three of the colonists, Thomas Christie, William Calvert and Joseph Hughes, five thousand acres of land in the colony of Georgia in trust to convey therefrom fifty acres to every male adult who requested it and wished to settle. The terms and conditions of the grants were fixed by the trustees. The principal conditions were these:

"The grantee of a town lot was to build upon it, within eighteen months, a house twenty-four by eighteen feet, at least eight feet high, and reside in the province for three years. Ten acres of the fifty acres should be cleared and cultivated within ten years from date of grant. One hundred white mulberry trees were to be planted as soon as the clearing therefor could be made, and were to be carefully preserved, and all trees dying were to be replaced by mulberry trees.

"No alienation for any term, or of any estate, without special license from the trustees was allowed.

"Conviction of felony or the employment of negroes, without license, were the grounds of forfeiture."

In addition to these conveyances to be made by Calvert, Christie and Hughes, the trustees further offered to grant to any person who would, within twelve months from date of grant, remove to Georgia with ten able-bodied free white men servants, all of age, and remain three years, cultivating the lands and building thereon, five hundred acres at a rental of twenty shillings per one hundred acres to begin ten years from the date of the grant. Within ten years the grantee undertook to clear two hundred acres and plant thereon two thousand white mulberry trees and on every one hundred acres as cleared one thousand additional trees of like sort. Any part of the tract remaining uncultivated, unclear-ed, unplanted and without worm fence or paling six feet

high, after the expiration of eighteen years, should revert to the trustees.

To male servants filling a term of service of not less than four years in the province the common council agreed, that upon the expiration of their term, if requested by the grantee so to do, to grant to each of them "twenty acres of land in tail-male upon such rents, conditions, limitations and covenants, as might have been attached to grants to men-servants in like circumstances."

The grantees of the five hundred acre tracts were prohibited from keeping, lodging, hiring, or employing any negro except by special permission; in fact the general prohibition of the trustees declared: "The use of negroes and rum is prohibited in this province."

It will be remembered that by the charter of the colony it was provided that no one should hold more than five hundred acres of land. One of the principal objects of this provision was, by preventing large holdings, to repress the consequent temptation to employ slave labor and to thus prevent the importation of negroes into the province.

To the infant colony two things were of vital importance, a supply of food and an organized military force to repel Indian attacks; this last no less necessary to insure the supply of food than to protect life.

The necessities of the case, demanding that the grantor of the soil should find in his feoffee a farmer and a soldier, produced a curious repetition of history in the character of the estates granted; and as the military character of the feudal system produced the estate in tail-male, which might furnish in the tenant a soldier for the war, so in the youngest Colony of Great Britain on the American continent, the estate tail which could furnish the male tenant as a soldier and farmer was introduced in the one and universal tenure of land.

This analogy may be pursued further: Every lawyer knows the many statutes passed to prevent the alienation of estates tail, and their evasion by the Courts. And it is reasonably certain that in the earlier days of their institution,

such alienation was rigidly prohibited, in order that the number of military tenants should not be lessened by one tenant holding two or more fiefs. And so it is stated of the lands in Georgia by a writer who visited the Colony in 1735, that they may not be alienated by the owners. Says this writer: "In order to maintain many people, it was proper that the land should be divided into small Portions, and to prevent the Uniting them by Marriage or Purchase. For every time that two Lotts are United the two looses a Family, and the Inconveniency of this shows itself at Savannah, notwithstanding the care of the Trustees to prevent it. They suffered the moiety of the Lotts to descend to the Widows during their lives. Those who remarried to men who had Lotts of their own, by uniting two Lotts made one to be neglected, for the strength of Hands who could take Care of one was not sufficient to look to and improve two. These uncleared Lotts are a Nuisance to their Neighbors. The trees which grow upon them Shade the Lotts; the Beasts take shelter in them, and for want of clearing the Brooks which pass through them, the Lands above are often prejudiced by Floods. To prevent all these Inconveniences, the first Regulation of the Trustees was a strict Agrarian Law, by which all the Lands near Towns should be divided—50 acres to each Freeholder. The Quantity of Land, by Experience, seems rather too much, since it is impossible that one poor Family can tend so much Land. If this Allotment is too much, how much more inconvenient would the uniting of two be? To prevent it, the Trustees grant the Lands in Tail-Male, that on the expiring of a Male Line, they may regrant it to such Man having no other Lott as shall have married to the next Female Heir of the Deceased as is of good character. This manner of Dividing prevents also the Sale of Lands and the Rich thereby monopolizing the Country." (Francis Moore's *Voyage to Georgia* (1734), 27.)

Or, as it is expressed in the rules laid down by the Trustees for the year 1735:

"All Lots are granted in Tail-Male, and descend to the Heirs Male of their bodies forever, and in case of Failure

of Heirs Male to revert, to be granted again to such Persons as the Common Council of the Trustees shall think most for the Advantage of the Colony; and they will have a special Regard to the Daughters of Freeholders who have made improvements on their Lots, not already provided for by having Married or Marrying Persons in Possession or entitled to Lands in the Province of Georgia, in Possession or Remainder.

"All Lotts are to be preserved separate and undivided, in order to keep up a number of men equal to the number of Lotts, for the better defence and support of the Colony. No person can lease out his House or Lott to another without License for that Purpose, that the Colony may not be ruined by absentees receiving and spending their Rents elsewhere. And no person can alienate his Land, or any Part, or any Term, Estate, or interest therein to any other Person, without special License for that Purpose; to prevent the uniting or dividing of the Lotts."

A modification of these rules, however, permitted the person dying without male heir to name his successor, and to him the trustees regranted the lands in like tail-male.\*

#### OGLETHORPE'S TREATIES WITH THE INDIANS

By a treaty made with the head men of the various tribes of the Creek Indians, on the 21st of May, 1733, the lands between the Savannah and Ogeechee, with the exception of a reservation on the Savannah river near Pipemaker bluff, and all lands and islands within tide-water between the Ogeechee and Altamaha, except the islands of Ossabaw, St. Catharine and Sapelo, were granted to the trustees. This treaty was confirmed by another, made in 1739.\*

The treaty of 1733 was also our first attempt to regulate commerce. In it General Oglethorpe fixed the commercial relations between us and our Indian neighbors. We agreed that a white blanket should equal five buckskins, a blue one three, a gun ten, eighteen flints one, and a knife one doeskin; and the Indians agreed "to keep the talk in our hearts as long as the sun shall shine or the waters run in the rivers."

That of 1739 reached a somewhat higher plane, when Georgia obtained her first "fugitive slave law," the Indians agreeing that they would return them and have for each live slave caught beyond the Oconee four blankets and two guns, and half that if on this side of the Oconee; but if the slave was killed running away or resisting arrest, one blanket was to be paid for the delivery of his head.<sup>6</sup>

The more we study the career of Oglethorpe, the more we are impressed with the broad greatness of his spirit and the long reach of his practical and business like intellect. The military dispositions he made are above criticism and his skill in dealing with the Indians suggests the highest practice of statesmanship.<sup>7</sup>

#### THE FIRST CONVEYANCES

The Trustees, having acquired all outstanding titles to the district of Savannah, and the town having been laid out and the lots distributed, on the 21st of December, 1733, Thomas Christie and William Calvert, the survivors of the three colonists, created trustees for this purpose; conveyed in one deed to eighty-four grantees, fifty acres of land to each; each fifty acres comprising one town lot in Savannah, sixty by ninety feet, a garden lot on the confines of the town of five acres, and a farm of forty-four acres and one hundred and forty-one poles. Two shillings per annum, to commence at the expiration of ten years, was to be paid as rent for each lot.

The conditions of the deeds have been already given. The lands were granted in tail-male. This, the first deed ever executed in Georgia, is of record in the Secretary of State's office. Attached to it is a schedule of the wards, tithings and lots, with their grantees. A plat of Savannah, therein referred to as attached, is not recorded with it, and has been lost.

As shedding further light on the tenures and titles of that time, the partial description of the division of the land as determined upon by the trustees, to promote the best interests of the Colony, given by Francis Moore in his

account of Savannah, which he visited in 1735, is of interest.

"Each Freeholder has a Lott in Town 60 Foot by 90 Foot, besides which he has a Lott beyond the common, of 5 acres, for a Garden. Every ten Houses makes a Tything and to every Tything there is a mile square which is divided into 12 Lotts besides Roads. Each Freeholder of the Tything has a Lot or Farm of 45 acres there, and two Lotts are reserved by the Trustees to defray the charge of the public. The town is laid out for two hundred and forty Freeholders; The quantity of land necessary for that Number is 24 Square Miles; every 40 Houses in Town make a Ward to which 4 Square miles in the Country belong; each Ward has a Constable and under him four Tything Men. Where the Town Lands end, the Villages begin; four Villages make a Ward without, which depends upon one of the Wards within the Town. The use of this is, in case a war should happen, that the Villagers without may have places in the Town to bring their Cattle and Families into for Refuge, and to that Purpose there is a Square left in every Ward big enough for the Out Wards to encamp in.

"There is Ground also kept around about the Town ungranted in order for the Fortifications. Beyond the Villages commence Lotts of 500 acres; these are granted upon Terms of keeping 10 servants, etc. Several Gentlemen who have settled such Grants have succeeded very well and have been of great service to the Colony." (Moore's Voyage to Georgia (1735), 28.)

As the freeholders of Savannah increased, deeds of like tenor with the first were duly executed to them. Other deeds were made by the trustees, through their common council, either direct or by some authorized agent. Sometimes similar deeds of trust to that above described were made for like purpose.

#### RESTRAINTS UPON ALIENATION REMOVED

From the beginning there was more or less dissatisfaction felt at the refusal of the trustees to grant fee simple estates, and at the restraints on alienation; and frequent

were the petitions and remonstrances sent by the colonists urging the removal of these grievances.<sup>4</sup>

Indeed, one writer recounts that just as the ship "Anne" was ready to sail, the Colonists insisted upon provision being made by which the widow's dower should be secured and daughters could inherit from fathers. On account of the unsettled condition of the country and the war with the Spanish in Florida, the Trustees argued that estates in tail male should be preserved as an encouragement to persons capable of performing military service; but the colonists insisted on their position, and finally the matter was unsatisfactorily compromised, by "ordaining that the widow should have her thirds, and an agreement that if the landowner died without male issue, he might by will designate his successor." The difficulty being temporized, the ship sailed. But the opposition continued in spite of the reasoning of those in control.<sup>5</sup>

In the complaints of the colonists this trouble always occupied a place next to the iniquities of the Judiciary. Finally the Trustees, grown desperate, formulated a reform which thickened the fog and concerning which Dr. Tailfer felt called upon to observe: "We believe this paper will perplex most people who have not studied the law, to make sense of it; and as there are no lawyers in Georgia, it would seem as if it had been sent over with no other end than that it should not be understood."<sup>6</sup>

On June 20th, 1739, the trustees, while refusing to grant the relief prayed, had modified the system so far as to permit daughters to inherit from deceased parents in default of male issue; and had further provided that the widow should have for life the mansion house, garden and a moiety of the lands of deceased, and that deceased, in default of issue, might devise his lands, provided that no devisee could hold more than five hundred acres. In default of devise, the land went to the heirs at law of the original grantees. Finally, on the 25th of May, 1750, the trustees, yielding to the prayers of the colonists, removed the ground of grievance by converting all estates heretofore granted, and hereafter

to be granted, by them into estates in fee simple, to be held in free and common socage. This, and the repeal of the law prohibiting the use of the slave, or negro labor, was soon felt in the impetus given to the location and settling of large bodies of land, which immediately followed.<sup>4</sup>

#### NO RECORD OF LAWS PASSED DURING THIS PERIOD

The Royal Charter authorized the Trustees "to make laws and regulations," but whether this only meant "by-laws," or whether those enacted have been lost, it is a fact that from the date of the settlement until the Trustees surrendered the property to the Crown as a Colony, there is scarcely a record of legislative action.<sup>5</sup>

#### THE TOWN COURT AND ITS JURISDICTION

In most of the colonies the courts developed according to the needs of the inhabitants. But the Trustees for the Establishment of the Colony of Georgia did not wait to find out what was wanted, but before the colonists left London, organized a court with a full complement of officers and imposed a ready-made and most elaborate judicial machinery. So that when the "good ship Ann" sailed in 1732 with the "first sixty" as passengers, there was on board an undue proportion of the judiciary—3 judges, 2 tything men, 2 constables and a clerk.

Shortly after their arrival Oglethorpe determined to commemorate the founding of Georgia by opening court. Accordingly, on July 7, 1733, the Settlers met on the Bluff, the Commission was read, the Magistrates were inducted into office, court was opened, the first Georgia jury impaneled and a case was tried. (1 Jones Hist. of Georgia, 151; 1 Stevens Hist. of Georgia, 101.) Thus the first public event in Georgia was a judicial function. And "July 7th," was long celebrated in the Colony as "Anniversary of Court Day," being its July 4th, February 22nd and Thanksgiving Day all in one. The Court thus so strikingly inaugurated was furnished with accompaniments most surprising for a tribunal in the woods of a new settlement. The judges were supplied with "purple gowns trimmed with furr," and the

Trustees purchased a "copper-gilt mace," costing the equivalent of \$500, and a seal costing \$150, or, together, five times the value of the log house in which court was held. They intended to give the judges a high-sounding title, and so they called them Bailiffs, after those bearing that name in an ancient English tribunal. In this they made a sad mistake, for from this now belittling title arose the impression that the court only had a petty jurisdiction. As a fact it had all the power over life liberty and property possessed by the Superior Court of the present day. This fact appears from the Commission which conferred jurisdiction "for the Hearing & Determining of all manner of Crimes Offences Pleas Processes Plaints Actions Matters & Things whatsoever arising or happening within the Province of Georgia in America or between any Persons inhabiting or residing there whether the same be Criminal or Civil & whether the said Crimes be Capital or not Capital & whether the said Pleas be Real Personal or Mixt & for awarding or Making out Executions thereupon; \* \* \* all Treasons Misprisons of Treason Insurrections Rebellions Counterfeitings Clipping Washing Coining & other falsyfying of the Money of great Britain or of any other Realm or Dominions Whatsoever also of all Murders Felonies Homicides Killings Burglaries Rapes of Women unlawful Assemblies Conspiracys Confederacys Transgressions Trespasses Riots Routs Rescues Escapes Contempts Negligences Concealments Maintenances Oppressions Deceits & all other Crimes Offences & Injurys whatsoever & also of the Accesorys thereunto;\* \* \* full Power Jurisdiction & Authority to hold Pleas in all & all Manner of Causes suits & Actions as well Real as Personal & Mixt & of any Debt Account Tresspass in Ejectment & other Trespasses Covenants Promises Contracts & Retinues whatsoever.\*"

\*The appointment of the Court and the commission of the three Bailiffs is set out in full as an appendix to Judge Lamar's "Bench and Bar of Georgia During the Eighteenth Century." 30 Ga. Bar Ass'n Rep. 52.

## BAILIFF CAUSTON AND THE LAWYERLESS COURT

On July 7, 1733, at the close of a hot summer day which had been devoted to feasting and thanksgiving and patriotism, the first court was organized in Georgia, presided over by Bailiffs George Symes, Richard Hodges and Francis Scott—Noble Jones being recorder and Richard Cannon and Joseph Coles, constables.<sup>7</sup> An old record innocently states: "There were no pleaders of the law present, but some fine old English beer."<sup>8</sup> Without a lawyer; without the faintest appreciation of the terrible responsibility such a trust imposed; without learning to apprehend and, as was demonstrated, without capacity to observe or ambition to acquire, this remarkable tribunal began its career thousands of miles from the sources of its power, in a strange land and in a community made up of English, Scots, Germans and Indians. The office or the climate seems to have been too much for Mr. Hodges, who was speedily gathered to his fathers. What might have been the brilliant careers of Symes and Scott will ever be speculative, for Mr. Thomas Causton being named to the vacancy, from that moment the Court was Causton, and Causton was the Court. There being no constitutional inhibitions in those days, it befell that Mr. Causton was also the public storekeeper—an incident not without its influence on the early judicial history of Georgia. Who he was and whence he came! How he looked and in what garb moved among those dependent upon his lofty caprice, are of the mysteries as profound as the birthplace of Homer or the pleasing air which was wafted to the restrained mariners of the wandering Ulysses. By what comes pretty near being the consensus of colonial opinion, he was of a limitless ambition; passionate and proud; regarding public office as a private investment, and conducting himself generally as the central figure of a colonial system which had been exploited with the single view of enabling him to grow and develop to full proportions. It cannot but be interesting to the learned and dignified jurists who in our day toil for scant reward for the people of Georgia and who sit habitually in the blinding glare of public opinion, to consider

their far-off predecessor who, sitting in the humble hut at Savannah, which was by courtesy called a court, did as he pleased not only in defiance of public opinion but with a fixed determination, perfectly understood, to commit public opinion to jail, in his capacity of judge, if it protested, or to starve it into submission in his capacity of storekeeper. When the long-suffering trustees, at length concluding that he had sufficiently monopolized the public attention, sent Mr. Peter Gordon to take his place, the resourceful Mr. Causton simply shifted his person a few feet from the courtroom to the public store, and declining to furnish Mr. Gordon with commissary supplies, that unfortunate gentleman, after a hopeless siege, maintained with fortitude and without provisions, struck his flag and moved out of his stronghold, which was at once reoccupied by Mr. Causton—that great man holding that public office was *ferae naturae* and when at large belonged to whomsoever could catch and hold it. Grand juries fulminated and petitions filled with more grievances than the Declaration of Independence found their way across the seas and were duly gathered into the Minutes and Journal of the Trustees. The reading is rich and varied. It appears that if an associate justice did not readily acquiesce in the policies and decisions of Mr. Causton, that gentlemen incited him to undue indulgence in strong liquor, of which there was no lack in General Oglethorpe's prohibition State. From the bench he declared that the laws of England were no laws in Georgia, and like a modern Caligula produced from his pocket a small book which he proclaimed contained the laws he proposed to administer. He made false imprisonments; discharged grand juries "whilst matter of felonies lay before them;" intimidated petit juries, and "in short, stuck at nothing to oppress the people." When at length an appellate tribunal was formed, the magistrates to be appealed from were the judges to be appealed to, which, to say the least, was not a promising condition and justified the very moderate criticism that "the administrators of such a policy should, in propriety, be invested with some suitable resemblance of character and equity." One grand

jury advised the trustees "that the said Thomas Causton by his office of storekeeper hath the dangerous power in his hands of alluring weak-minded people to comply with unjust measures; and also overcoming others from making just complaints;" and that "the known implacability of the said Causton, and his frequent threatening of such people, is to many weak-minded though well-disposed persons a strong bulwark against their seeking redress." A list of complainants, whose names fill three octavo pages looking like a census of the colony, forms a gruesome exhibit to the official presentment.

But grand juries and petitioners were the least of the avenging spirits which began to creep fast upon the gay footsteps of Mr. Causton. It was of his misfortune that, justly or unjustly, he had incurred the enmity of Dr. Patrick Tailfer and in "A True and Historical Narrative of the Colony of Georgia in America," with a quotation from the fourth ode of Horace on the title-page, and a dedication and preface of length and dignity, the facile pen of that far-off chronicler has preserved for all time an estimate of Mr. Causton and his associates expressed in language, to use the words of Mrs. Gamp upon a celebrated occasion, "such as lambs could not forgive nor worms forget." There was little left of colony, trustees, or the world at large when the doctor laid aside his pen; and this is the sketch he has drawn of Mr. Causton: "Whilst we labored under these difficulties in supporting ourselves, our civil liberties received a more terrible shock; for instead of such a free government as we had reason to expect, and of being judged by laws of our mother country, a dictator (under the title of bailiff and storekeeper) was appointed, \* \* \* whose will and pleasure were the only laws in Georgia. In regard to this magistrate, the others were entirely nominal, and in a manner but ciphers. Sometimes he would ask in public their opinion, in order to have the pleasure of showing his power in contradicting them. He would often threaten juries, and especially when their verdicts did not agree with his inclination or humor. And in order to establish his ab-

solite authority, the store and disposal of the provisions, money, and public places of trust were committed to him; by which alteration in his state and circumstances he became in a manner infatuated, being before that a man of no substance or character, having come over with Mr. Oglethorpe amongst the first forty, and left England upon account of something committed by him concerning his majesty's duties. However, he was fit enough for a great many purposes, being a person naturally proud, covetous, cunning, and deceitful, and would bring his designs about by all possible ways and means. As his power increased, so did his pride, haughtiness and cruelty; inasmuch that he caused eighteen freeholders with an officer to attend at the door of the court every day it sat, with their guns and bayonets, and they were so commanded, by his orders, to rest their firelocks as soon as he appeared; which made people in some manner afraid to speak their minds, or juries to act as their consciences directed them. He was seldom or never uncovered on the bench, not even when an oath was administered; and being perfectly intoxicated with power and pride, he threatened every person without distinction, rich and poor, strangers and inhabitants, who in the least opposed his arbitrary proceedings, or claimed their just rights and privileges, with the stocks, whipping-post, and loghouse, and many times put those threatenings into execution; so that the Georgia stocks, whipping post and log-house soon were famous in Carolina, and everywhere in America where the name of the Province was heard of, and the very thought of coming to the colony became a terror in the people's mind."

Dr. Tailfer has remarks to make about other judges, but these he regarded as weaklings. Mr. Gordon was "of a very winning behavoir, affable and fluent in speech," and soon got the good-will of the people who began to lay their grievances before him. But just as they came to know him well and love him, Mr. Causton cut off his provisions "whereby he was obliged, after six weeks' stay, to leave the place." Another bailiff, Mr. Parker, according to Dr. Tail-

fer, was "a man who had nothing to support himself and large family but his day labor, which was sawing," and so he became dependent on the public store. On the same authority, he was a man of no education and was soon moulded to Mr. Causton's liking. Being a slave to liquor, he who plied him most with it (an attention which Mr. Causton never forgot) had him right or wrong on his side. Mr. Darn, who ascended the bench only to die, was crazy in body and mind; and his successor, Mr. R. Gilbert, could neither read nor write. In the Journal of the Trustees it appears that Lieutenant Colonel Cochran and Captain Thompson, late arrived from Georgia, were before the Trustees, and their views are thus noted: "That Mr. Hen. Parker, 1 Bailiff, is a tolerable magistrate; but it was a surprise and jest our appointing Gilbert the Taylor to be a magistrate. That there is not a man in the Colony fit to be a magistrate. That there is not a man in the Colony fit to make 3d Bailiff." It was of the irony of fate that Mr. John Fallowfield, who being a magistrate, yet sided with the people, was declared by the trustees for so doing to be a leader of malcontents, setting himself up as dictator and for these reasons summarily dismissed from office.

Probably the full effect of Mr. Causton's administration is best illustrated by the typical cases cited by Dr. Tailfer. Mr. Odingsell appears to have been a rural gentleman from the neighboring province of Carolina; nervous as to temperament, and uninstructed in the devious ways and strange surroundings of city life. The temptation to visit the metropolis of Georgia was too strong for him, and setting aside the natural caution of his disposition, and with the ostensible object of seeing for himself how the colony succeeded, he disembarked upon what should have been hospitable shores. After a philosophic survey of such conditions and sights as were presented to his bucolic experience during the early days of his stay, he became venturesome and undertook to see Georgia by night. He was at once apprehended as a stroller and carried to the guard-house where he was threatened with the stocks and whipping-post that "being a

mild and peaceable man," the terror and fright threw him into a "high fever and strong delirium;" and after lying in this "distracted condition" for days, crying out to all that they were come to take him to the whipping-post, he died.

But not even a trivial consideration of the judicial history of Georgia is permissible without reference to the great and celebrated case of the King versus Watson. Exactly what Mr. Watson had done it is difficult to ascertain. One record would indicate that having incurred the displeasure of Mr. Causton, he was indicted for stirring up animosities in the minds of the Indians. The Journal of the Trustees, on the other hand, suggests that he was really guilty of murder in that he had induced one Skee to indulge in unlimited quantities of rum—enough to have killed two men, and which actually did bring Mr. Skee to a conclusion. But uncertainty as to the crime seems to have presented no obstacle to an indictment. At the trial Mr. Causton presided and acted in the capacity of Judge and witness. The jury having returned several verdicts which did not accord with the views of the court, was on each occasion remanded to their room, until in desperation it found Mr. Watson guilty of "using unguarded expressions," and recommended him to the mercy of the court as a lunatic. Mr. Causton, moulding the verdict to suit himself, sent Mr. Watson to jail, from which he was subsequently released on bail. Mr. Watson, the jury and the people fiercely assailed Mr. Causton for tampering with the verdict, whilst the trustees arraigned him for bailing a lunatic which they declared was itself an act of lunacy. To the frequent representations which were made by the people of the colony, the trustees sitting in their quiet office near the Old Palace Yard, Westminster, turned a deaf ear, and through their secretary, Mr. Benjamin Martyn, expressed their displeasure with much the same indignant earnestness as was exhibited by Mr. Bumble when young Twist petitioned for his rights.

But Mr. Causton got out of perspective when he began to encroach on the power and rights of the trustees. He might do as he pleased when the practical result was only

scaring Mr. Odingsell to death and locking up the bibulous Watson. When he became freehanded in the drawing of sola bills he was summoned home for trial. To the relief of the colony and of civilization, he died at sea, and that was the end of Mr. Thomas Causton. The system survived him several years, but does not seem to have been carried on in the same magnificent way. Mr. Thomas Jones, for instance, was also "passionate and proud," and was a great stickler for Caustonian precedents. But he lacked the mentality of that distinguished man. In fact, it was said of him that he surpassed Causton in everything that was bad "without having one of his good qualifications."

#### NO LAWYERS BUT MUCH LITIGATION

In this Lawyerless and Lawless Court the inhabitants had, as Bishop Stevens says, "to follow the old Gallic custom and plead each man his own cause in person," even though there were one or two in the colony who knew something about law. One is referred to as a "pretended lawyer," and another as having been "bred as a smatterer in law". (4 C. R. 61, 423; 5 C. R. 62, 183, 188; 7 C. R. 98.) Williamson is mentioned as having been "bred an attorney." He moved to Charleston, where Oglethorpe thought he had better remain because he could make more practicing there than in Savannah. Nothing more is said of him until 1740 when Stephens recites that "Williamson returned from Charleston and turned solicitor in a cause or two heard betwixt some of our Indian traders. But, being timely admonished, thought it safest not to appear as pleader, though he confidently affirmed that he had the Trust's leave to practice as an attorney." (4 C. R. 618, 431, 443; 5 C. R. 177; 1 C. R. 41; 5 C. R. 257.)

It seems, therefore, certain that during the government of the Colony by the Trustees there was no practitioner in Georgia and that the courts were not authorized to admit persons to the Bar.

For a part of the time this affirmatively appears from a statement made in 1745 by William Stephens that "all of

the Magistrates of Fredereka had been summoned to England as witnesses in the case of Col. Cook against Gen. Oglethorpe. And as divers felonies had been committed in the County of Fredereka, and there can be no trial because of the absence of the Judges, the officers in Savannah were in doubt as to whether they had jurisdiction and . . . thought it expedient to take the opinion of some able lawyer as to how far they might safely proceed. We having no such gentlemen to advise us, and knowing that Captain Horton, by direction from Gen. Oglethorpe frequently advises with Mr. Rutledge in intricacies of this nature, wherein the law is not clear, thought that his advice should be the rule to proceed by, rather than that such notorious crimes should go unpunished." (6 C. R. 144-146.)

Indeed the absence of lawyers was given as one of the inducements for emigrating to the new colony. Those, however, who were already there and suffering from the Trustees' mistakes took a very different view of this fact, as appears from the "Narrative under Oath" signed by a majority of the male inhabitants of the colony. For it is there said "That the British Nation was deceived with the fame of a happy, flourishing colony and of its being free from that pest and scourge of mankind called lawyers—for want of whose legal assistance the miserable inhabitants were exposed to a more arbitrary government than was ever exercised in Turkey or Muscovy." (1 McCall, 54, 2 Ga. Hist. Col. 204; 21 C. R. 326.)\*

Having been all things to all men in all times, to the Trustees, the lawyer had come to be in the wilds of Georgia a plain and transparent Grecian horse, his thick sides swelling with painful possibilities for the peaceful Troy before whose gates he had been opportunely stayed. And thus it was solemnly concluded that Georgia could and would afford to do without lawyers, and incidentally, without law, taking its justice in drastic doses from a court which was at once lawyerless and lawless. It was a scoffing denial—the colonists in Savannah bragging that there were no lawyers there, and the staid Salzburger from the swamps

of Effingham lifting up his rejoicing voice that with them dwelt neither lawyers, Courts, nor Rum—a juxtaposition of terms, expressed with an irritating capital which, whilst doing great injustice to a sober calling, gravely reflected upon the habits and yearnings of the dweller in Yamacraw. When last heard from Effingham was still dry and Chatham wet.’

But while there were no lawyers, it does not follow that there were no lawsuits. Indeed, the scanty records and Stevens’ Journal contain an undue proportion of references to court proceedings.

There are suits on notes, bonds, accounts, actions of trespass, ejectment and—no end of imprisonments for debt. The court even took cognizance of Ecclesiastical offences, and proceedings were instituted therein against Mr. Wesley for refusing communion to a member of the church and for similar charges, as though there was a complete union of church and state and as if the Town Court of Savannah had the jurisdiction of the Court of Arches in England. (4 C. R. 19.)

But it was on the criminal side that business was most active, and as there was no practicing attorney the defendants represented themselves, the King being represented by the constable. Anyone who has ever seen a trial conducted by and before laymen will not be surprised to find that with the constable on one side and the defendant on the other, technical points were insisted on with vigor. For these early settlers did not seem to need the advice of an attorney to make points in order to escape being whipped on the bare back or hung by the neck until they were dead.

These criminal proceedings had all the common law accompaniments. There was the usual “pious fraud” of finding that the value of the property was less than a penny, so as to reduce the offence below a felony. In one case a woman was convicted of bigamy and in order to save her life she was given the benefit of clergy. Such leniencies, however, were rare, for usually the convictions were sure and the punishment heavy. Standing in the pillory, sitting in

the stocks, whipping on the bare back were common, and at one session three men were convicted for murder, and two hung, and all without lawyers—or perhaps because they had no attorney.\*

#### LITIGATION WITH THE TRUSTEES IN ENGLAND

But although the Trustees permitted no lawyer to practice in Georgia, they themselves had occasion for their services in England, both in formal matters and in heavy litigation. The Charter required the Board to submit its accounts annually to the Lord High Chancellor, the Chief Justice of England, the Chief Justice of the King's Bench, and the Master of the Rolls. This brought the affairs of the Colony to the attention of Lord Hardwick, by many thought to be the greatest of the English Chancellors. He made a contribution to the fund and showed great interest in the colony. When the Trustees decided (3 C. R. 87) to abandon Savannah and make a new capital further south, they named it Hardwick, after him. Sir Joseph Jekyl, Master of the Rolls, and friend of Oglethorpe, also had occasion to examine the accounts and made contribution of 500 pounds, the largest single gift made to the Trust. (3 C. R. 63; 5 C. R. 252.) In recognition of the fact Jekyl Island was named in his honor and he thereby acquired the permanent fame that comes to those after whom rivers, mountains and islands are called.

But the Trustees were not solely interested in making reports to admiring judges. They were several times sued and Colonel Oglethorpe secured the adoption of a resolution that they should "employ the Attorney General and Solicitor General in all cases where the Trustees had occasion to be represented in legal proceedings." (1 C. R. 282, 285; 2 C. R. 150.) In pursuance of this resolution, Ryder, Attorney General, afterwards Chief Justice of England, and William Murray, Solicitor General, afterwards Lord Mansfield, were retained.

There were four of these legal proceedings in England. We do not know who was counsel for the Trustees in the

case brought by Bosomworth in right of his wife, (Mary Musgrove\*\*) claiming that as an Indian princess she was entitled to St. Catherine's Island, by virtue of the reservation in Oglethorpe's first treaty with her tribe. The first hearings were before the Privy Council in London. It was then remitted to the Governor and Council in Georgia and resulted in a decree that Bosomworth should receive a large sum, in payment of which St. Catherine's Island was ordered to be sold. (8 C. R. 85, 323.)

The next case was brought against the Trustees, in the Court of King's Bench, by Rev. Mr. Norris, who claimed 800 pounds to be due him for ecclesiastical services rendered in Savannah. The Trustees admitted an indebtedness of 70 pounds. He recovered a verdict equivalent to \$350, but the costs were \$300.

Another proceeding against the Trustees was heard in Parliament. Thomas Stephens, as the representative of a majority of the inhabitants of the colony, charged that the affairs of Georgia were mismanaged and the colony misgoverned. The matter was regarded as of such importance that a public hearing was had before the House of Commons which permitted Stephens to speak for the Georgians and allowed the Trustees to be heard by counsel. They selected William Murray, who was then in the height of his fame as a lawyer. He needed to put forth his best efforts, for the vote was exceedingly close, 77 being for, and 88 against censuring the Trustees. It was, however, a technical if not a moral victory, and the Earl of Egmont sardonically enters in his journal that "Stephens is to be brought before the House tomorrow on his marrow-bones and reprimanded from the chair," and on June 30, 1742, he enters (5 C. R. 640), "This day Thomas Stephens was according to order, brought to the Bar, where on his knees, the Speaker severely reprimanded him and it is ordered he be discharged, paying his fee."

The last proceeding against the Trustees grew out of the fact that Georgia had passed an Act making it unlawful for Carolinians to trade with Indians west of Savannah

without license. Carolina attacked the act as void. There was a hearing before the Board of Trade and Plantations, the predecessor of the modern Privy Council on an application for an order in the nature of an injunction to prohibit the enforcement of the Georgia statute. Georgia was again represented by Murray and Attorney General Ryder. He had previously given an opinion that a Carolina statute requiring Virginians to get a license to trade with Indians was void as denying Virginians the right of an Englishman to trade wherever he desired. This opinion was probably quoted against Ryder and must have stampeded the Georgia lawyers, including Murray. At any rate, Mr. Wesley, who was present as a witness in the case, entered in his journal: "Till twelve o'clock, the Carolina side was heard. Then our counsel (confused enough) was heard for Georgia . . . Murray made our defence, but so little to Mr. Oglethorpe's satisfaction that he started up and ran out." (Wright's Life of Oglethorpe, 172.)

This ought to be some comfort to other lawyers to think that even Murray, the greatest lawyer of his day, could not always please his clients, nor always win his causes, for the judgment was in effect against Georgia. But the case is of three-fold interest—furnishing as it does an instance of a suit by one Colony against another before the Privy Council, where Colonial statutes, approved by the king, were nullified, because interfering with Inter-Colonial—or what we call interstate commerce.\*

#### GEORGIA, A ROYAL COLONY

On June 20th, 1752, just nineteen years and eleven months from the day that they had accepted the same, and organized with such sanguine hopes, the trustees having resolved that they could no longer provide for the defence and protection of the Colony, executed a deed of surrender of their charter to the Crown\* and a quit-claim to all the vast territory between the Savannah and Mississippi, and "defaced the seal."\*

From thenceforth Georgia became a royal province. This surrender was for seven-eighths interest conveyed by

the Crown in 1732, and for one-eighth interest conveyed in the same year to the Trustees by Lord Carteret.

Subsequent to the surrender of the charter grants by Georgia's Trustees, King George the Second, on August 6th, 1754, issued a commission to John Reynolds as Captain-General and Governor-in-Chief over the identical territory as that contained in the grant to James Oglethorpe and other Trustees.

On May the 4th, 1761, King George the Third commissioned James Wright as Captain-General and Governor-in-Chief of the Colony of Georgia, the commission covering the same territory as that previously granted to Oglethorpe and other Trustees, and to Reynolds as Governor, except that the southern boundary extended from the Altamaha to St. Mary's River. About this period, to wit: on June 26th, 1764, George the Third issued a commission to one William de Brahm as Surveyor-General of the southern district of North America, with instructions as to surveys desired to be made by the Crown, including the boundaries of the province of Georgia. In this survey Georgia's territory was given as lying between latitude  $30^{\circ} 26' 49''$  to latitude  $35^{\circ} 30'$ —the north boundary being, according to that survey,  $30'$  north of that now claimed by our state.\* These boundaries became of the greatest importance in the contest with South Carolina referred to hereinafter.

It was governor, Sir James Wright, who in 1773 complained of the Northern Colonists because "they take but little of our produce and drain us of every trifle of gold and silver that is brought here by giving a price for guineas, moidores, johannes, pistoles and dollars far above their real and intrinsic value, so that we can never keep any among us." We see how early began the talk here of money of real and intrinsic value, copied by Blackstone in 1776, and how soon we had trouble about money; and that, although we had gold coins of other nations, including the pistole of John of Portugal (perhaps the only lucky John who ever wore a crown) and "the dollar of our dad-

dies," though bearing the stamp of Spain, we were not happy. We see how early money acquired the habit of not staying here but going North, and that sound money commanded a premium in the markets. If we seek an explanation, we will perhaps find that we exchanged rice, corn, peas, indigo, lumber, live stock and barreled beef and pork for what the Northern Colonists sent here, to-wit, rum, flour, biscuits and provisions, and we ate and drank so much as to throw the balance of trade the wrong way.<sup>5</sup>

#### THE GENERAL COURT AND ITS JUDGES

England's experience with granting charters to American colonies had not been satisfactory, and it had been decided that no others should be issued. When the new order was to be established in Georgia the King appointed Reynolds governor and gave him a Commission which in some sense served as a charter, for it imposed on him the duty of calling a Legislative Assembly and conferred upon him authority to constitute courts and define their powers. (Stokes' "Constitution of British Colonies in America," 115, 119, 121.) The minutes show that on November 8, 1754 (7 C. R. 28), "the Governor read to the council the King's instructions for erecting courts of judicature. But as the board had been informed that William Clifton, Esquire, appointed Attorney General for this Province, was daily expected here, they thought it proper to postpone further consideration of so weighty a matter until the arrival of the Attorney General." When he reached Savannah he was asked to prepare a plan for constituting the courts. On December 12, 1754 (7 C. R. 33, 38, 43), he presented a report which was adopted and is the very germ of our Judicial system. It provided for the erection of a "General Court with like power and authority as is used and exercised by the respective courts of King's Bench, Common Pleas and Exchequer in England" and for a separate court of Chancery to be held before the Governor and Council for determining all matters of equity. Instead of a belittling title like that of Bailiff which had handicapped the Town

Court of Savannah, this Commission went to the other extreme and called them Barons, it being provided that "for any crime (except Treason or Felony) every citizen should have free liberty to petition the Chief Baron, or any one of the Judges of the Common Pleas, for a writ of habeas corpus \* \* \* And in case the Baron shall refuse to grant the Writ, the said Baron or Judge shall incur the forfeiture of his place." (7 C. R. 29.) All of the unfinished business in the town court was transferred to this court (13 C. R. 126), which seems to have had no very definite title, for it was referred to as General Court; Court of Oyer and Terminer; Court of General Sessions; Supreme Court; and Circuit Court. (15 C. R. 528; 15 C. R. 235; 15 C. R. 365.) To preserve form and dignity, the Board ordered that "the Rules and Practices of the Courts of Westminster Hall shall be as strictly followed as heretofore as circumstances will admit." (7 C. R. 53. Stokes' British Constitution in America, 131.)

All of this was the result of the work of William Clifton, Attorney General of the Province, the first lawyer authorized to practice in Georgia.

He was a faithful officer, remaining in the Province and attending to his duties in person, instead of following the then usual course of appointing a deputy and dividing the fees. He had a short leave of absence in 1758, during which time Thomas Barrington, Esquire, acted as Attorney General pro tem. (7 C. R. 826.) On returning to Georgia, Clifton resumed his duties, and evidently gave great satisfaction. For when in 1764 he was appointed Chief Justice of Florida, then in control of the British, the Commons House of Assembly of the Province of Georgia (14 C. R. 147.)—"Resolved, That the thanks of this House be given to the Honorable William Clifton, Esquire, late Attorney General of this Province and now Chief Justice of West Florida, for his upright conduct in his office as well as in all other public employments and that the Speaker do signify the same to him by letter."

For several years after his arrival in Georgia, Attorney

General Clifton had refrained from qualifying as a member of the Council, but in 1757 he decided to assume the duties of that office and thereupon (7 C. R. 591, 592) submitted a memorial to the Governor and Council in which he expressed a desire to be admitted to the Board, explaining that "on his arrival in the Province, finding a multiplicity of business arising from the appointing and establishing courts of judicature, and settling the practice thereof and otherwise (there being at that time but one other of the Profession in the Province), he did therefore decline taking his seat at the Board."

On the adoption of Clifton's Report in 1754 Noble Jones and Jonathan Bryan were appointed judges "during pleasure." (See Stokes' *British Constitution in America* (259), where their commission is set out in full.)\*

Noble Jones was the Colonel of the first Regiment raised in Georgia; while Jonathan Bryan was Captain of the first troop of Horse. As junior officers of a South Carolina regiment both had been with Oglethorpe in his expedition against St. Augustine. Dr. Noble Wymberly Jones, son of the Judge and Colonel, was one of the most active of the Georgia patriots before and during the Revolution and Jonathan Bryan, though nearly eighty years of age, was a member of the Council of Safety, and was described by the British Commander as "a notorious ring-leader of rebellion."<sup>10</sup>

These Associate Judges were evidently to hold office until the King named a Chief Justice for the Province.

His salary of 500 pounds was paid by Parliament, and, according to the custom of the time, there were also costs and fees which sometimes amounted to as much again. This 1,000 pounds was, considering the difference in purchasing power, equivalent to at least \$10,000 in the present money; and as the custom was to fill the place with an English Barrister, the King—Miller (2 Bench & Bar 97), says Gov. Ellis—appointed William Grover, a graduate of Pembroke College, Oxford, and a Barrister of the Inner Temple, London.

He remained in office until 1762, when charges were made against him because of his arbitrary and partial conduct. The Bar recommended that he should be suspended by the Governor and Council until the King's pleasure could be known. There was a hearing and an order of suspension. Grover replied in verse—which was voted a scandalous attack on Governor Wright—and left the colony. (Jones' Hist. of Ga., 54.)

He was succeeded by William Simpson, appointed chief Justice December 15, 1766. (9 C. R. 428.)

And this brings us to the next Chief Justice, "Anthony Stokes; of the Inner Temple, London; Barrister at Law; and His Majesty's Chief Justice, and one of his Council in Georgia" as he describes himself on the title page of one of his books.

"On March 23rd, 1769, His majesty was graciously pleased to appoint Mr. Stokes Chief Justice of Georgia, but as it was some time before the sign manual reached him he did not leave St. Christopher's until the 28th day of July, 1769, and on the 26th of August following he arrived at Sunbury, a southern port in Georgia, some distance from the Metropolis. He therefore did not reach Savannah until some days after his arrival and was not sworn into office until the first of September, 1769."

As you will see, he was a barrister, a practicing lawyer and, the records show, a man of integrity, courage and ability. He was our first legal author and published a pamphlet:

"Directions for the officers of His Majesty's General Court and session of Oyer and Terminer and general Gaol Delivery of the Province of Georgia. Compiled by the Chief Justice, Savannah, 1771, 4 to 24 p."\*

#### THE PRACTICE OF LAW IN THE COLONY

As we have seen in Williamson's case, the Colonial courts did not admit persons to practice, that power being exercised by the Trustees in London. But beginning with the King's Government in Georgia, the courts admitted per-

sons to the Bar. We do not know what were the terms of their admission. Stokes (p. 269) says that in the Colonies generally those who had read at the Inns of Court or had served clerkship in England were admitted on producing proper certificates, but leaves it uncertain as to how those were admitted who had had no such preparation.\*

The early province was blessed with the presence of legal advisers who had been called to the Bar at the Inns of Court, London. The duties of counselor and attorney were united in the same person, much to the disgust of Justice Stokes, who evidently considered "practice" in the making of a lawyer a great disadvantage, for he says: "The practical part has so employed the attention of colonial advocates that few have leisure to attain to any considerable degree of knowledge, and the advocate who has the greatest fluency may sometimes be considered as the ablest lawyer." He intimates, too, that the advocates were not averse to strife, because he says: "Most of the questions which arise in the colonies are founded in litigation and not in intricacy." (269-270)\*

It was not until 1754 that the Georgia Courts admitted attorneys to practice. In that year this power was exercised, as we learn from the fact that in the list of fees payable to the Chief Justice appears this entry: "For admitting every lawyer to practice, 2 pounds,"—the fee bill also fixes the costs payable to Proctors, Solicitors in Chancery and Attorneys of Common Pleas. The colony was prosperous, and attorneys were sufficiently numerous in Savannah in 1759 to be referred to as "the Bar." (8 C. R. 736, 751.)

We do not know what were the terms of their admission in Georgia, but the English courts were authorized by act of 1729 (2 Geo. II, Chap. 23) to admit attorneys who had read 5 years. Barristers, however, were called to the Bar by the Inns of Court much as the graduates of Law schools without examination in court.

The names of Thomas Burrington, Charles Watson, William Handley, William Woodruff, William Ewing, John Lucena, Alexander Wyley, Grey Elliott, James Box,

appear as attorneys in proceedings before the Governor and Council. The Colonial Records show that money was occasionally paid out by the colony for legal service; and the names of the colonial attorneys general: Charles Pryce, William Graeme and James Hume are thus preserved in the Appropriation Bills like flies in amber.

Three of the four Colonial Governors attended the Inns of Court. William Stephens was a student of the Middle Temple and had occasion to use his legal training when he was made President of the Colony and presided in land cases and on appeals from the Town Court of Savannah. Governor Ellis read at Temple Court, and Sir James Wright, a son of the Chief Justice of South Carolina, had also read at one of the Inns of Court. Both, therefore, had a training which was valuable when they sat in the Court of Chancery or presided on appeals from the General Court.\*

These colonial lawyers knew that "many mickles make a muckle," and that, from their standpoint, it was better to charge something for everything rather than to include all in a lump sum. They had their fee bill, copied no doubt largely from that in force in England, where every service had its price. Under the Colonial Cost Bill there was a retainer fee of 7 shillings; every time an attorney filled up a writ he was paid 2 shillings, and one shilling more for a copy to keep. Whenever he drew a declaration, replication, rejoinder, demurrer, joinder in demurrer, or other pleading, his fee was 2 shillings, with 4 pence for every copy, and 1 shilling additional for signing his name; for every attendance at court his fee was 1 shilling, and for every motion or argument after his appearance 2 shillings; he was paid for his brief and for striking the jury 2 shillings each. In fact, he charged for everything he did, for everything he said, for everything he wrote, for everything he copied, and then for everything he signed, all of which was charged in the bill of costs and paid by the losing party.\*

In Chief Justice Stokes' Narrative is an account of a controversy with the Bar over a Rule that "if an Attorney be

absent when his case was called, he should not be reddey until he paid 20s. to the use of the poor of the Parish, and as some of the gentlemen of the Bar doubted the Court's authority to make such a rule, he produced a similar Rule of the King's Bench in England, whereupon the Counsel were of the opinion that the precedent produced justified the rule." (12 C. R. 331, 345.)\*

#### COLONY DIVIDED INTO PARISHES

When the trustees originally colonized Georgia, they established only one county therein, the county of Savannah. In 1741 the county of Frederica was established. These counties were divided into numerous districts. By the Colonial Act of 15th of March, 1758, the country between the Savannah and Altamaha, including the islands as far south as St. Simon's, were divided into eight Parishes. To give their boundaries, as laid down in the Act, would be too tedious. The territory between the Savannah and Ogeechee, from the coast to the country surrounding Augusta, was divided into the Parishes of Christ Church, St. Matthews, St. George and St. Paul, stretching in this order from the sea to the Indian line. South from Ogeechee to the Altamaha, in like succession, stretched the Parishes of St. Philip's, St. John's and St. James. Frederica and the two islands of St. Simon's formed the Parish of St. Andrew. When the country between the Altamaha and St. Mary's was added to Georgia, the Turtle, Little Satilla and Great Satilla rivers formed dividing lines for the four new Parishes of St. David, St. Patrick, St. Thomas and St. Mary, which in order, reached from the Altamaha to the Florida line.\*

#### THE SOUTH CAROLINA GRANTS

By the peace between Great Britain and Spain in 1763, the former acquired the Floridas. The country between the Altamaha and St. Mary's was added to Georgia, and her Governor ordered to assume jurisdiction over the same. The original province of Georgia extended only to the Altamaha on the South, and South Carolina under the lim-

its fixed by her original charters claimed jurisdiction over this region, South of that river. The contest with the Spaniards had heretofore forbidden any exercise of actual authority. As soon, however, as Great Britain acquired the Floridas, and established their Northern boundary, at the St. Mary's and thirty-first degree of North latitude, before learning the pleasure of the Crown as to this country between old Georgia and the Florida line, Governor Boone, of South Carolina, by virtue of the rights claimed by that province, proceeded to grant to various parties, tracts of land in this new country south of the Altamaha. A stormy correspondence ensued between Sir James Wright, then Governor of Georgia, Governor Boone, in South Carolina, and the officials in England. The practice was stopped by the British Government and the convention of Beaufort, in 1787, settled the dispute in Georgia's favor. By an act of 25th March, 1765, a time was fixed within which these grants should be proven and recorded in Georgia, or be barred.

Some of the "Carolina Grants" as they were called, are registered in the Secretary of State's office and some of the titles in question draw their origin from the province of South Carolina. While commenting hereon, it may be noticed that some few claims were also made to lands under grants emanating from the Lords Proprietors of Carolina; notably, one made by the heirs of Sir William Baker to twelve thousand acres of land. Some of this land had been granted to the soldiers of Oglethorpe's regiment. McCall, in his history of Georgia, says that the heirs of Baker succeeded in their claim, and the soldiers had to re-purchase from them.\*

#### THE FORMS AND CONDITIONS OF THE GRANTS

The quiet gained for the province of Georgia by the removal of the menace of the Spanish hostilities from her southern border, coupled with the availability of her unlocated land, brought many settlers to her soil. The increase of the business of the land office was considerable.

It will be interesting to note the forms of grants then in use in the province. All titles sprung from the Crown and were held in fee simple, and in free and common socage.

The town lots were granted with all the preciseness and verbosity of the old conveyancing, to the grantee, he "yielding and paying for said lot" "yearly, and for every year, one peppercorn, if demanded."

The conditions of the grant required the building of a house (as prescribed) within two years, upon forfeiture of one pound sterling per annum for failure so to do. If the house was not built within ten years, the grant was forfeited. The grant specified that it was to be void unless registered in the Register's office, "and a docquet thereof also entered in the Auditor's office" within six months from its date.

The grants to farms were drawn in the same old style, enumerating all of the appurtenances granted including the "fishings," and also the "privilege of hunting, hawking, and fowling."

To the Crown were reserved all white pine trees and the tenth part of mines of silver and gold. The rent reserved was two shillings for every hundred acres, to commence at a given time, usually one or two years after date.

The grantee was further bound, within three years, to clear and work three acres of arable land, or clear and drain three acres of swamp, or drain three acres of marsh for every fifty acres of "plantable" land in the tract. Within a like time he must put on every fifty acres accounted barren, three neat cattle, or six goats, or sheep, and keep them there until three acres for every fifty was improved. Some grants contained this additional condition: If any of the tract was stony, unfit for tillage or pasture, the grantee was to begin within three years to employ one able hand, for every one hundred acres, "in digging any stone quarry or coal, or other mine," and continue to so employ such hand for three years. This was sufficient cultivation for said one hundred acres.

Every three acres cleared, worked or drained redeemed fifty acres from the operation of these conditions and left only the balance of the tract liable to forfeiture for their breach. A proportionate amount of cattle and stock could also be removed from the tract and (if the grant contained such condition) any like quantity of quarrying and mining stopped as each three acres was fully reclaimed. If the rent reserved remained due and unpaid for one year, and no distress could be found on the premises, the grant reverted. The requirement for registry within six months is also prescribed.

These grants were in the form of deeds by way of bargain and sale, and the provision for registry, or rather enrollment, was that prescribed for such deeds by the Statute 27, Henry VIII., Chapter 16. Operating as it did in the place of livery of seizin, it differed from our registry statutes by being requisite to the validity of the deed, which unless enrolled within the time prescribed became void. The deed, by bargain and sale, having superseded all other forms of conveyance, the provision for enrollment became, by modification, the registry system extending so generally throughout the United States, and this will account for the fact that this country preceded England in the adoption of a general registry of conveyances of land.

The transfer of property between individuals was generally made by lease and release, or by deeds of bargain and sale, especially by the first method. By the Act of 1760, the wife might waive her dower, otherwise she was not debarred by the conveyance or mortgage of her husband. The Act allowing such waivers and the form prescribed survives intact in Section 4204 Park's Annotated Code. By an Act of 1755 all conveyances of realty or personalty were required to be recorded, if executed in Georgia or South Carolina, within three months; if in Europe, within a year and a day; and if in the West Indies or any part of America north of South Carolina, within six months. If this was not done, the instrument was inferior to younger instruments properly registered. This changed the enroll-

ment necessary to validity of the deed into registry affecting only its priority. Wills, unless registered within three months from testator's death, were void, except those made in Europe, for which a year and a day was allowed. By the Act of 1768 all conveyances and mortgages of realty or personalty theretofore made were to be registered within certain times, and all such instruments made in the Province of Georgia, if recorded within ten days after their execution, should be deemed the first mortgage or conveyance over any older one not duly recorded.

By an Act of 1767, all suits to recover realty must be brought within seven years from the time of the right of entry, or they were barred. Married women, infants, lunatics and persons beyond seas were excepted and allowed three years after their disabilities were removed.

A second mortgagee was permitted to redeem the first mortgage. If the first mortgage had not been made known to him in writing by the mortgagor before the second mortgage was made, the mortgagor forfeited his equity of redemption.

No deed of any sort was impeachable for want of form or for want of attornment, livery of seizin or enrollment, or because made by assignment or endorsement on another deed. Such defects could be cured by showing that if the deed had been executed as claimed, the grantor could have conveyed good title. In fact, the Provincial laws seemed aimed at two points: First, to prevent the want of form invalidating where the purpose and right was clear. Second, to cause a memorial of record of all transfers of lands or chattels to be promptly made, that written notice might exist and fraud be prevented. It was a wise policy, which should have been improved upon and aided, rather than departed from in our later law.

The common law, except when altered by statute, regulated the character of estates which might be created, their dissolution, transfer and several incidents.

In 1773 the peace with the Indian tribes was assured, and their title to a large tract of country south of the

Broad river extinguished, by the treaties made at Augusta. Active preparations were made to settle this country, when the advent of the Revolutionary struggle for a time interrupted the course of internal development.<sup>4</sup>

#### COLONIAL LEGISLATION

On January 24th, 1755, the real work of law-making began; evidently with a view of impressing the populace and shutting off discussions as to its power, one of the first acts imposed penalties upon "any person who shall declare that the Acts of the General Assembly of Georgia are not of force." At this session laws establishing the militia, fixing the rate of interest, preventing fraudulent deeds, and regulating fences, were the first feeble beginnings of that vast and ponderous mass of Statute law since enacted.

But even after the Colony began to pass laws, there was no one by whom they could be published, so that the pen had to do the work of the press. In 1762 an act was passed "making provisions for printing the laws of this Province and for encouraging a printer to set up a printing-press in the same," the preamble reciting that "whereas the laws have not hitherto been well known, and because printing is the quickest and easiest method of publishing them; and whereas, there has been no printing-press in the Province, but all public transactions have been published by handwriting." James Johnson was elected Printer of the Laws, at a salary of one hundred pounds per annum, and at once set about collecting the acts which had thus been "published by handwriting" during the preceding seven years.

He printed them separately, sometimes printing only on one side of the sheet, sometimes on both; and these undated and separate acts were distributed like handbills, and, of course, lost. But at least three persons made partial collections of these scattered papers, and bound them with the pamphlets containing the annual session laws published up to 1799. These leaves and pamphlets, thus bound together and preserved, constitute the only existing published rec-

ords and laws passed prior to 1799. Of course the annual pamphlets were very small and insignificant, frequently containing less than a dozen pages; but what they lacked in size they made up in a sounding and grandiloquent title—that of 1762, for instance, reading as follows:

“ACTS,

passed by the General Assembly at a session begun and holden at Savannah, on Wednesday, the eleventh day of November, Anno Dom., 1761, in the year of our sovereign Lord, George the Third, by grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth; and from thence continued by several adjournments to the 4th day of March, 1762, being the second session of this present Assembly.” Savannah. Printed by James Johnson.”

Considering that other colonies had not only published their annual session laws, but, in most instances had made compilations or abridgements of their statutes at large, the utter absence of published statutes for the Colony of Georgia is remarkable. It is more remarkable that, after attention was called to the omission, and a law passed authorizing their publication, nothing was done to correct the evil.<sup>a</sup>

In the colony of Georgia the fee system ran wild. The Act of 1773 for “Settling Fees” covers thirty pages in the “Colonial Acts.” We smile at the toy republic of San Marino, with its standing army and its tiny public debt, but the youthful colony of Georgia, with a population smaller than many of its counties today, provided in this Act for fees to the Governor, Secretary, Clerk of Council, Messenger of Council, Doorkeeper of Council, Messenger of the Upper House, Clerk and Messenger of the Common House, Chancellor, Master in Chancery, Register in Chancery, Solicitor in Chancery, Chief Justice, Attorney-General, Clerk of the General Court, Clerk of the Crown and Peace, Provost Marshal, Judge of Admiralty, Marshal of Admiralty, Register of Admiralty, Advocate-General, Public Treasurer, Powder Receiver, Coroner, Comptroller, Notaries, Auditor General, Clerk of the Church of England, Sexton, Crier

of Court, and our old friends the Justices of the Peace and Constables.

Evidently, like some of our new regiments, which consist altogether of majors and colonels, every inhabitant of the Colony had an office, and some of them must have had two. No matter how insignificant these positions sound, they were decidedly worth having. The Sexton was paid 2 shillings for digging a grave and 2 shillings for filling it up, besides 1 shilling for ringing the bell. The Clerk of the Church got one shilling for attending the funeral, and a like amount for attending every marriage and christening. But these lucrative positions were nothing to that of the Crier. He got a fee for every case that was tried, whether he had anything to do with it or not. He was paid for every witness who was sworn, and for every non-suit that was granted, and also for every verdict which was taken, and the long list of emoluments, to which he was entitled, winds up as follows: "From every attorney at the end of each court and sessions, and from the prothonotaries one shilling." This looks very much like a legalized tip.

There were many acts passed for the purpose of raising funds for His Majesty, occasionally by imposing a duty on shipping or fixing fees and dues, but mainly by taxing land under a system which practically remained in force until 1840. But it was wholly at variance with our ideas. The present doctrine is that all taxation should be *ad valorem*. The early statesman thought exactly the opposite, and taxes were specific. Land was divided into three classes, such as swamp land, pine land, oak and hickory land, and this subdivided into that of the first and second quality; sometimes it was again subdivided into the land between the Florida line and Savannah, between Savannah and Rae's Creek, and between Rae's Creek and the Tennessee line; then it might be again subdivided into land within one mile of the river and land more than a mile from the river. It was taxed so much per acre regardless of its market value. For example: The state laid a tax of 4 shillings on every 100 pounds, and then, relieving the taxpayer's conscience of

the burden of fixing values, the Act proceeded to assess cultivated lands at 4 pounds per acre; pine barrens within three miles of a town at 15 shillings; all good oak and hickory land from the mouth of McRae's Creek to Broad River and within one mile of the Savannah River at 15 shillings. A poll tax of 4 shillings, afterwards 3 1/4 cents on every white person, and 2 shillings on slaves; 9 shillings on every pleasure carriage; 50 cents on every lawsuit; 1 pound on every free negro and the same on every lawyer.\*

The salary of the Governor was fixed at 1,000 pounds with perquisites amounting to 319 pounds more. The revenue applicable to the support of the Provincial Government was raised from the King's quit rents, and by an annual tax on houses, lands, negroes, money at interest, stock in trade, and specified articles.<sup>11</sup>

Every act of the Colonial Assembly was provisional. It required the royal assent to become a law. Each had a preamble stating briefly the necessity for its passage, with the following form of enacting clause: We therefore humbly pray his most sacred Majesty that it may be enacted, and be it enacted by the Governor, Council and Assembly, of this, his Majesty's Province of Georgia, and by the authority of the same; That, etc." What favor these humble petitions in the enacting clause too often met with is shown by the fact that the very first charge against the King in the Declaration of Independence is that "He has refused his assent to laws most wholesome and necessary for the public good."

The Colonial Legislatures had much less confidence in their wisdom than ours. Every law was regarded as more or less an experiment. They were not expected to be permanent. Each Act, instead of concluding, as ours do, that "laws in conflict are repealed," usually wound up with the provision that "this Act shall continue in force for two years, and from thence to the end of the next session," and occasionally a sort of omnium-gatherum Act would be passed "for continuing the several laws of this Province which are near expiring," and, instead of making them permanent

even in this sort of Act, concluded by providing "These Acts shall severally and respectively continue and be further in force during the term of one year and thence to the end of the next session."

This plan may have been resorted to at first for the purpose of having something for the little Assembly to do. For, while the early Legislature had no great subjects with which to deal, it heroically attempted to make up for the deficiency by diversity. It passed separate divorce bills, until wearied with the process, wholesale separation was attempted, and sometimes as many as twenty-five couples were divorced in one bill. It pardoned criminals; it passed bills to authorize lotteries for raising money to build churches; to establish a library for the University; to build manufacturing establishments; and one Joseph Rice, of Savannah, was authorized to establish a lottery to raise \$10,000, on his representation to the Assembly "that he had in his possession watches and jewelry which he could not dispose of in the regular course of his profession as a watchmaker."

The General Assembly would pass laws for internal improvements: for laying out roads; establishing stage lines; taking the census; for selling the glebe lands. It adopted stay laws, and expressed its opinion of public men.<sup>a</sup>

The harshness or leniency of the administration of criminal affairs is the surest index to the condition of a people, and in truth the most surprising features of the early colonial life are found in these Criminal Statutes. It is possibly not correct to say in the Criminal Statutes, because very few were enacted. Until 1816, the Criminal Law of England was of force in Georgia almost without a change or amendment. The definition of crimes and all the Criminal Statutes, the methods of procedure and every peculiarity of the English law were rigorously followed. It has been decided that we have no Common Law crimes in Georgia; if so, it must be because the adoption of a Penal Code is construed to repeal all criminal laws not therein contained, for until 1816 we had absolutely nothing else.

The rule as to the corruption of blood as a result of

felony must have been recognized. There appears to be no record of forfeiture of property upon conviction of crime, but the provisions of the Act on the subject of "Gouging and Biting" recognize that such forfeiture resulted. After reciting that "nothing more forcibly marked the barbarity and ignorance of a country than the savage custom of gouging and biting"; this Act provides that for "the first offence the party convicted should pay a fine, and stand in the Pillory not exceeding two hours; but, if unable to pay a fine, he should receive 100 lashes on his bare back and be set at liberty. For a second offence, he should be deemed a felon, and suffer death without Benefit of Clergy; Provided that said attaint should not extend to corrupt the blood, forfeiture of dower, or the offender's goods and chattels."<sup>a</sup>

If biting and gouging did not "mark the barbarity and ignorance of a country," the punishment prescribed for the offense certainly did.

In 1793 the punishment for counterfeiting, forging, and horse stealing, was death without benefit of clergy.

As late as the year 1809 horse-stealing was punished, for the first offense, with thirty-nine lashes on the bare back, and three several days, and on each day a stand in the pillory of one hour, and in addition imprisonment for from twenty days to one month. For the second offense, the punishment was death, without benefit of clergy.<sup>13</sup>

Existing conditions call for the enactment of laws. It has, therefore, become trite to say that the history of a people may be written from an examination of its laws. Even if the historian had said nothing upon the subject, we would be able to draw a picture of the dangers and unrest of the population from the frequent laws for the regulation of the militia, establishment of powder magazines, and what appears on the subject of weapons. One-third of the time of our courts is today taken up in punishing men for carrying and using weapons. Time changes,—in 1766 it was enacted that "if any male person should attend church

without carrying with him a gun or a pair of pistols in good order and fit for service, with at least six charges of powder and ball, or shall fail to take such gun or pistol with him to his pew or seat, he shall be fined ten shillings." (Watkins, 157.)

Judging from the statutes, we would infer that bear-baiting and bull-baiting were not infrequent; that deer-hunting in the night was a euphuism for cattle-stealing (Colonial Acts of Ga., 258), and that the oppressor of the poor had already made his appearance, since it was necessary to make an assize of bread. The four-penny loaf was to weigh three pounds, if flour sold at ten shillings. If flour was twenty shillings, the loaf was to weigh one pound five ounces, and so on, the price varying both according to the price of flour and the quality of bread. The Act then elaborately provided methods to prevent the fraudulent adulteration of flour. It allowed a Justice of the Peace to enter a bake-shop, search for and weigh bread, and if he found any under assize to confiscate it to the use of the poor of the parish.

Oglethorpe had founded this colony in the interest of those who had not been able to pay their debts in England, but a change of climate does not seem to have effected a change of habit, or possibly it may have been with them as it is now—and was with the wicked servant who, discharged from liability himself, took his own debtor by the throat, saying, "pay me that thou owest." At any rate, the Digest (Watkins) bristles with Acts providing for the payment of small debts, for the support of those imprisoned for debt, and with others making it penal for the owners of ships to carry off debtors in their vessels. From the frequency with which this latter Act appears one would suppose that the poor debtor, having left England to escape those whom he owed there, no sooner landed in the new colony than he found it expedient to put back again to elude his American creditors.

There is one still more curious law on this subject of debts. In 1766 it was enacted that "if any person should

give credit to or trust any seaman for any sum exceeding five shillings, he, she or they so giving credit to or trusting such seamen shall for every offense lose the money or goods so credited or trusted." We do things better now, for we manage "to lose the money or goods so trusted" without the assistance of the Legislature.\*

When we read of the horrors of the debtor's prison, we sicken at the thought that such things ever could have been. And yet there was a time when imprisonment for debt, with all its English rigor, prevailed in the colony of Georgia. In the year 1766, a measure of alleviation was adopted, when an act was passed for the relief of debtors who might be confined in jail and were unable to support themselves during their confinement. By it the debtor was allowed, on petition to the court and notice to creditors, to surrender whatever property he might have and take a prescribed oath. If the creditor insisted on his being detained, and agreed to pay a named sum for his support, the debtor was not discharged; if the creditor refused to make the agreement, the debtor was to be discharged. But the act did not apply if the debtor's trade or occupation could be carried on, and he could find employment, within the jail, by which to earn a subsistence.

By the act of 1762 all persons were compelled to attend divine worship, and the third division of the Penal Code of 1816, consisted of "Crimes against God." They were defined to be "Denying His existence, or a future state of rewards and punishments," and they were punished with being incapacitated to give testimony in a court of justice, or of serving in any office of honor, profit or trust in this State.

In the present Code there is no trace of the fetters that bound the minds of men for centuries; there is no trace of the pillory, the lash, the bare back; nor is there a place in it for mention of the debtor's prison. We have grown away from those darksome things and they exist now only as a burthen upon the memory.

It is only fair to remember that the cruel severity of these laws and customs was the high-water mark of the

condition of the people in all departments of thought and life. The doctors were tapping the fountain of life with leech and lancet; the theologians stood just behind them with a salvation chance fixed at about one-half of one per cent; the reaper and binder, the sewing-machine, and even the patent churn, were unheard of. As to the railroad, it seemed but a dream of the possible, as will appear by the following facts:

In the year 1800 the sole and exclusive right of running a line of stage-carriages for the conveyance of passengers and their baggage between the city of Savannah and the town of Augusta was vested by legislative grant in three persons. The right comprehended all the different routes, and the grantees were required to run the stage-carriages at least once every week between the two places.<sup>13</sup>

Of course, there were many laws on the subject of inspection of tobacco and indigo, but there is only a reference to "Cotton" until the year 1803, when a most curious statute was passed. There is a current saying that exclusive of its fiber cotton is worth cultivation for its by-products alone. The cotton-seed-oil was used for man, but the hulls and meal are now regarded as the very best food known for cattle, and with what was once a refuse the cattle on a thousand hills may be made seal fat. Yet, in 1803, the Legislature passed "An Act to compel the owners of cotton machines to enclose the same, and in Particular Situations, to remove the seeds therefrom." The "gin" was then generally called a "cotton machine," and it was provided that where such "cotton machines" were located in a town, the owner should enclose the seed in such manner as would effectually prevent all stock from eating thereof. The owner was also required to secure and keep the seed dry, and to remove them at least once a week, so as to prevent all unwholesome effects resulting therefrom, and from the stench and vapors arising from the seed in a putrid state, and further must enclose them in such a "manner as to prevent the neighbors' stock from feeding thereon." Speedy reme-

dies were provided for collecting the penalty, and the Justice of the Peace himself was subject to be fined if he neglected to enforce this law. This Act has never been repealed, except by the "Act of Dry Rot." But who can say how many millions upon millions have been lost and destroyed in the throwing away of the by-products of the cotton plant.<sup>a</sup>

#### THE BEGINNING OF THE CONFLICT

The formula of the American Revolution was that there should be no taxation without representation. In December, 1768, the Commons House of Assembly of the Province of Georgia passed a resolution expressing adherence to this theory of taxation in a resolution wherein they said:

"At the same time, with inexpressible concern, we much lament that by the imposition of internal taxes, we are deprived of the privileges, which, with humble deference, we apprehend to be our indubitable right, that of granting away our own property, and are thereby prevented from a ready compliance with any requisition which your Majesty may please to make, and which, to the utmost of our small abilities, we have hitherto most cheerfully obeyed."

In 1769, the colony of Georgia gave striking expression to this theory of the right of taxation by refusing to levy a tax upon the four parishes between the Altamaha and the St. Mary's acquired in consequence of the Treaty of Paris at the close of the French and Indian war, upon the ground that these parishes were without representation in the Colonial Assembly, resolving:

"That, under the circumstances, unless your Excellency coincides with us, we dare not impose a general tax, knowing with what abhorrence every member of our community holds the idea of a partial representation."<sup>18</sup>

How the subject of taxation has shaped the destiny of our Country, every student of history knows. Indeed "Taxation without representation," was one of the prime causes that brought about the American Revolution. The flame kindled by the Stamp Act of the British Parliament was soon fanned into that Revolution, which finally resulted in our

independence and the establishment of the Government of the United States.

A very interesting account of the arrival of the first stamps issued under that Act in Georgia is given by Mr. McElreath in his admirable work on the Constitution of Georgia, as follows:

"When the stamps arrived (at Savannah), there were in the port between sixty and seventy vessels, waiting for clearance, which could not be obtained on account of the refusal of the people of the colony to allow the use of the stamps necessary to give validity to their clearance papers. But the necessity for clearing the port seemed so urgent that the people finally consented to allow the use of the stamps for this purpose, but for none other. Their use, even for this purpose, was greatly resented by the people of South Carolina. Georgia was condemned as a 'Pensioned Government,' which had 'sold her birthright for a mess of pottage, and whose inhabitants should be treated as slaves without ceremony.' It was resolved that no provisions should be shipped to 'that infamous colony,' that every vessel trading there should be burnt; 'that whosoever should traffic with them should be put to death.' These inflammatory words were not an exaggeration of the feeling of the people of South Carolina, for two vessels, about to sail from Charleston to Savannah, were captured and taken back into port and destroyed with their cargoes."<sup>14</sup>

Benjamin Franklin, during the controversy over the Stamp Act and afterwards, was repeatedly elected by the Commons House of Assembly "to solicit the affairs of this province in Great Britain." He was paid a salary of 100 pounds and as an expression of the appreciation of his services the State afterwards made him a grant to the land to which he refers in his will.

Just before the Revolution the Attorney-General of the Province applied for Writs of Assistance. The record is most interesting:

"At an adjournment day of April Court, holden at Savannah in the said Province, on Monday the 3d day of May, in the year of our Lord one thousand seven hundred and seventy-three, in the thirteenth year of his Majesty's reign.

"PRESENT

"The Chief Justice, Mr. Justice Jones, and Mr. Justice Butler.

"Mr. Attorney General on behalf of the Commissioners of the Customs in the British Colonies in America, applied to the Court for writs of Assistants to be granted to the Officers of the Customs for the ports of Savannah and Sunbury: there honors the Judges were of opinion as follows; *viz.* his honor Mr. Justice Butler, that as he apprehended there was not an occasion for them at present, he was of opinion that the same should not be granted, not until there was a necessity for them; Mr. Justice Jones alleged, that as he had not come prepared in the matter, not being apprized of such intended application, could not give any opinion thereupon; and his honor the Chief Justice (Stokes) was of opinion, that the said writs of Assistants should be granted."

While Chief Justice Stokes was presiding at Savannah, the Georgia Provincial Congress prohibited attorneys from proceeding in any civil action and Stokes announced that "if any lawyer should delay his client's cause under pretense of the said Resolution the Court would strike such attorney off the roll." This brought on a conflict of authority, in which the Congress threatened to take action against Stokes if he enforced the rule, to which, however, he adhered and ordered his decision to be published in the paper.\*

In the proceedings of the Council of Safety just prior to the Revolution, appears a resolution reciting that it was rumored that all attorneys who sympathized with the proceedings of the late Congress had been stricken from the roll by the Chief Justice, and a committee was appointed to ascertain whether or not the rumor was well founded. Investiga-

tion demonstrated that the rumor was without foundation.\*\*

Stokes was several times arrested by the Americans and at last obtained permission to leave the State with his family, bearing with him a letter signed by John Wereat, who himself subsequently held the office of Chief Justice of the State. It was indorsed by Gov. Archibald Bulloch and acted as a "safe conduct."

"I am sorry," he wrote, "that this Province is deprived of so upright a magistrate as our late Chief Justice and sincerely wish you health, peace and freedom; for the last of which America is contending and will contend at every hazard."

After Stokes' return to England he wrote

A  
NARRATIVE  
OF THE  
OFFICIAL CONDUCT  
OF  
ANTHONY STOKES  
OF THE  
INNER TEMPLE, LONDON  
BARRISTER AT LAW;  
His Majesty's CHIEF JUSTICE, and one of his  
COUNCIL OF GEORGIA:  
and of the

DANGERS AND DISTRESSES

He underwent in the Cause of the Government  
Some Copies of which are printed for the Information  
of his Friends.

LONDON, 1784.

It gives the British view of the situation in Georgia, and also many side lights on legal affairs during the exciting years between the Stamp Act and the Revolution.

In that intermediate period between the repudiation of

British authority and the organization of the new Government, the exact legal status of Georgia was a matter of dispute. It was sometimes referred to as a Province and sometimes as a State, and there was a doubt as to whether Indictments should still run in the name of the King, as under the Trustees the question had been whether Bail Bonds should be to them or to the King. (4 C. R. 88.)

William Stephens had been elected as Attorney General, May 1, 1776, with a salary of 25 pounds (Rev. Rec. 119, 227), and Gov. Bulloch referred this question to him. As it is the first legal opinion of a Georgia lawyer, it may be stated that he gave it as his opinion that the following would be proper:

"The grand jurors of the body of the Province of Georgia, upon their oaths, present," etc., and concluding "against the peace of the Province and the welfare of the inhabitants thereof." (Charlton's Life of James Jackson 8.)\*

#### THE CONSTITUTION OF 1777

Because even the boldest hesitated to cut the bonds, and set up a new government, the colonies, prior to the Declaration of Independence, were governed by temporary Assemblies, and Committees of Safety, born of the necessity of those troublesome times.

Indeed, in Georgia, the President and Council of Safety remained in power until the State organized under the Constitution of 1777.<sup>16</sup>

The first constitutional convention of Georgia met in Savannah on the first Tuesday in October, 1776. The constitution known as the Constitution of 1777, was finally adopted and promulgated on February 5, 1777.<sup>17</sup>

This convention of the people of Georgia was composed of delegates from thirteen parishes and the towns of Savannah and Sunbury. This was the first regular Constitution for the State of Georgia, for the form of government adopted by the Provincial Congress in the year preceding could not properly be called a Constitution—it was merely

a military government, improvised to meet the emergency of the times.<sup>10</sup>

This Constitution began with certain whereases which were followed with this statement: "We, therefore, the representatives of the people, from whom all power originates, and for whose benefit all government is intended, by virtue of the power delegated to us, do ordain and declare, and it is hereby ordained and declared, that the following rules and regulations be adopted for the future government of this State."<sup>11</sup>

There was no separate article embracing an enumeration of principles, called in modern Constitutions "the bill of rights." Four brief sections in it constitute the declaration of "fundamental principles." They are as follows:

"Excessive bail shall not be demanded, nor excessive fines imposed. The principles of the Habeas Corpus Act shall be a part of this Constitution. Freedom of the press and trial by jury shall forever remain inviolate. No clergyman of any denomination shall be allowed a seat in the legislature."<sup>12</sup>

The Constitution followed that of Virginia in adopting the new maxim of free government:

"The legislative, executive and judiciary departments shall be separate and distinct, so that neither shall exercise the power properly belonging to the other."

This great maxim of free government, a bulwark of human liberty, although clearly stated, was not closely followed in the Constitution itself.<sup>13</sup>

The General Assembly, called the "House of Assembly," was a single body, composed of members elected yearly from each county. From this single body was elected an Executive Council to aid the House of Assembly in reviewing legislation before its final passage, and proposing amendments to the same. While the Executive Council had no right to vote in the House of Assembly, it had the right, by a Committee from its body, to be present covered, (the members of the House, except the Speaker being uncovered) and to discuss

in the House amendments to legislation proposed by the executive council.<sup>18</sup>

Article 7 provides that "The House of Assembly shall have power to make such laws and regulations as may be conducive to the good order and well-being of the State; provided such laws and regulations be not repugnant to the true intent and meaning of any rule or regulation contained in the Constitution." Thus in the beginning of constitutional government, as now, the power of the legislature to enact laws was limited by the terms of the Constitution, and the power to make them was also limited to those specifically chosen for that purpose.<sup>19</sup>

The electors were restricted to "all male white inhabitants, of the age of 21 years, and possessed in his own right of property of ten pounds value, and liable to tax in the State or being of any mechanical trade."

Those eligible as representatives should "be of the Protestant religion, and of the age of 21 years, and shall be possessed in their own right of two hundred and fifty acres of land, or some property of the amount of two hundred and fifty pounds."

The restriction as to the Protestant faith was unworthy of the men who framed the Constitution, and is inexplicable in the light of Sec 41.

"All persons whatever shall have the free exercise of their religion; provided it is not repugnant to the peace and safety of the State; and shall not, unless by consent, support any teacher except those of their own profession."<sup>20</sup>

The Executive Department consisted of a Governor and Council, both elected annually by the House of Assembly. The Council was selected from the members of the House of Assembly. The power of the Governor was very limited; he could not pardon any offence, could simply grant reprieves; he could not veto any bill passed by the House.<sup>21</sup>

This instrument created a judicial system composed of a Superior Court, a Court of Conscience, and a Court Merchant.

The Superior Court was held twice a year in each county, and had jurisdiction of all causes whatsoever, unless otherwise provided in the Constitution, and consisted of the Chief Justice, and three or more Justices residing in the county. It had jurisdiction not only in cases at law and in equity, and criminal cases, but as well in all matters usually within the jurisdiction of a Probate Court or Court of Ordinary. (Watkins' Digest, p. 13)

The Court Merchant was brought over from the days of the Colony, having jurisdiction in cases between merchants, dealers, and others on the one hand, and shipmasters, super-cargoes, and other transients on the other, the jurisdiction being unlimited as to the amount, and the Court being held by the Chief Justice, or in his absence, one of the Justices of the county. The proceedings were summary, cases being tried after seven days' notice.<sup>20</sup>

In America, general jurisdiction was conferred upon the Justices of the Peace first in criminal cases. In the colony of Georgia in 1760, an act was passed for a more speedy recovery of small debts and damages, thus making Justices of the Peace Judges of "small debt courts," as well as conservators of the peace. The rule of decision in these courts was according to equity and good conscience and the courts were called "Courts of Conscience." In 1762 the Act of 1760 was explained and amended and the Constitution of 1777 declared "that the Court of Conscience shall be continued as heretofore practiced and that the jurisdiction thereof be extended to try cases not amounting to more than ten pounds."<sup>21</sup>

Jurors attended the Superior Court, from whose decisions in civil cases an appeal was allowed to a special jury. There was no other provision for a new trial than by this single appeal to a special jury.<sup>22</sup>

Jurors in all cases, both civil and criminal, were made "judges of law as well as of fact," and to secure to them the full and free exercise of this high prerogative, no special verdict was allowed to be brought in; but if all or any of

them had doubt concerning points of law, they were at liberty to apply to the Bench, then composed of the Chief Justice and three or more county Justices, each of whom, in rotation, was required to give his opinion. This Constitution provided for both petit and special juries. The former were sworn "to bring in a verdict" according to law, and the opinion they entertained of the evidence, "provided it was not repugnant to the rules and regulations contained in the Constitution," and the latter were sworn to return a verdict according to law, and the opinion they entertained of the evidence, provided it be not repugnant to justice, equity and conscience and the rules and regulations of the Constitution, of which they were to be the judges.<sup>22</sup>

The provisions of this Constitution as to the venue of civil and criminal cases have been followed in all of the Constitutions of the State. Defendants in civil cases were to be sued in the county of their residence. Contests respecting real estate were to be tried where the real estate was situated, and criminal offences in the county where committed.<sup>23</sup>

The Constitution of 1777 formed the twelve Parishes of the Province into the six oldest counties of the present State, the distribution being as follows:

Christ Church and St. Phillip's South of Canouchee, became Chatham county; St. Matthew's and the rest of St. Phillip's became Effingham; St. George's Parish became Burke; St. Paul's became Richmond; St. John's, St. Andrew's and St. James' became Liberty; St. David's and St. Patrick's became Glynn; St. Thomas' and St. Mary's became Camden, while the ceded lands North of Ogeechee formed the seventh county, Wilkes.<sup>24</sup>

The Constitution took from the courts the power of admitting or disbarring attorneys and provided that "no person shall be allowed to plead in the courts of law in this State, except those who are authorized so to do by the House of Assembly, and if any person so authorized shall be found guilty of malpractice, before the House of Assem-

bly, they shall have power to suspend them. This is not intended to exclude any person from that inherent privilege of every *Freeman*—the liberty to plead his own cause."

This was so strictly construed that when Gen. McIntosh employed noted and distinguished non-resident counsel it was thought they could not represent him without authority of the House of Assembly, which thereupon passed a resolution "granting leave for Charles Cottesworth Pinkney, Thomas Pinkney and Edward Rutledge, Esquires, to be admitted to plead at any Court of justice in this State, so far as relates to any cause General McIntosh may be engaged in or have occasion to commence." (3 Rev. Rec. 300)\*

In this first Constitution no limitation was laid upon the exercise of the taxing power of the legislature, the only provision in the nature of a limitation being the directory provision that schools should be provided in each county and supported at the general expense of the State.<sup>15</sup>

The provision in reference to amendment in this constitution was as follows:

"No alteration shall be made in this constitution without petitions from a majority of the counties, and the petition from each county to be signed by a majority of the voters in each county within this State; at which time the Assembly shall order a convention to be called for that purpose, specifying the alterations to be made, according to the petitions preferred to the Assembly by the majority of the counties as aforesaid."<sup>17</sup>

This provision is the first instance of the much discussed modern right of the initiative by the people in the constitution of any American State.<sup>18</sup>

No amendments were ever made to this Constitution.<sup>19</sup>

This first Constitution shows that it was made by a people recently released from the control of a strong government, wild with the spirit of freedom, confident in their capacity to make laws for themselves and determine their meaning and application, unrestricted by vetoes of Governors or opinions of Judges.<sup>20</sup>

Entails and primogeniture were abolished, yet the republicanism of these early constitutions was only skin deep. There was a strange medley of new democracy and respect for old forms. Voters were each required to be possessed of ten pounds in his own right, and were subject to a penalty not exceeding five pounds for a failure to vote. The representatives were to be of the Protestant religion, own 250 acres of land, or be possessed of 250 pounds of property, and be able to swear that they had obtained their election without fraud or bribery. While titles of nobility disqualified a person from holding any office until he should give up such distinction, when he should be entitled to vote and hold office and enjoy the benefits of a free citizen, still, the same Constitution was very particular to provide that the title of Governor should be "Honourable," and to arrange all of the details by which communication between the Honourable Governor and the House should take place through the intervention of an intermediary council.\*

While the Constitution of 1777 was and has remained the foundation of Georgia's constitutional policy, nothing is known of the men who made it; its journal is lost, and the men who made it have been forgotten.

It was made in pursuance of the recommendation of the Continental Congress, as a step to throw off the oppression of Great Britain; and as an assertion of rights and privileges under the law of nature and reason.

It had its birth in a time of great trial, in the very presence of Tories and Royalists, with English sailors and soldiers on the one hand, and Indian savages on the other.

Georgia was the weakest of the Colonies; was largely an unexplored wilderness; with only seven counties, fringing the coast, and the bank of the Savannah River. It had not been half a century since Oglethorpe presided at her birth.

The adoption of this Constitution meant conflict between Georgia, the weakest of the Colonies, and the most powerful nation of the earth. It was an inspired acclamation of freedom, and a challenge to tyranny. Its makers,

although their names have been forgotten, were brave men. With tyranny seeking to throttle them, and with the hangman's noose ever in sight, they patiently worked out a system of local self-government that proclaimed a new and better freedom, and hastened the destruction of English power in the New World.

This was no task for the faint hearted. They were patient, courageous, iron-willed men, to whom we owe a debt of gratitude yet unpaid.<sup>10</sup>

By the General Assembly the Governor's salary was fixed at 500 pounds, and that of the Chief Justice at 300 pounds. In the distracted and impoverished condition of the feeble Commonwealth, then in the throes of a mighty revolution, it was contemplated that the salaries of these officers should be paid in sterling money or its equivalent. The purchasing power of good money, as contrasted with that of the paper currency issued upon the faith of the State, became, during the progress of the struggle, so great that one dollar of the former was reckoned as the equivalent of fifteen hundred of the latter. The Courts too were soon practically closed. *Silent leges inter arma*. Spasmodic and partial was the effort to collect taxes. The Government itself was peripatetic, and the proceedings of the Executive Council, charged with the administration of State affairs, consisted of little more than insignificant orders, brief communications, meager journals of convocations, deliberations, adjournments and removals, and scanty memoranda of efforts to promote the public safety.<sup>11</sup> So desperate was the situation at the close of the war, that Governor John Martin had to appeal to the Legislature to make special provision for his family to keep them from starving.<sup>8</sup>

#### THE REVOLUTION

The Bar Association historians have not attempted to write for us a connected history of the Revolution. This could not have been expected, but from the "thumb-nail" sketches of the lawyer-soldiers of the period we may get a

tolerable picture of the time, and some familiarity with the dominant figures of Eighteenth Century Georgia.

Mr. Justice Miller, in *Garland's case*, (4 Wall. 333) said that lawyers "are by the nature of their duties the moulders of public sentiment on questions of government." So it undoubtedly was in the days of the Revolution. To write the lives of Otis and Adams of Massachusetts, of Henry and Jefferson of Virginia, is to write the history of the period. And our own State's history, from the time when she made common cause with her sister colonies in resisting oppression till she took her place in the Union under the Constitution, may be best studied in the lives of Archibald Bulloch, George Walton and James Jackson, all members of the Georgia Bar.

It was Bulloch who planted the Liberty Pole, organized the Council of Safety, and headed the Liberty Boys; who was President of the first Provincial Congress which assembled at Tondee's Tavern; who led the party that burned every house on Tybee Island to prevent its use by the British seamen from the men-of-war anchored in the roads; who first read the Declaration of Independence to the assembled townspeople in Savannah; who became the first Provisional President of Georgia and commander-in-chief of the military forces; but who was cut off ere the conflict of arms had fairly begun. White in his "Statistics of Georgia" concludes his biography of Bulloch thus: "Georgians! Let the memory of Archibald Bulloch live in your breasts! Tell your children of him, and let their children tell another generation!" Right worthily have the descendants of the old patriot borne themselves. His son, Major Wm B. Bulloch, U. S. Senator, is mentioned in connection with the War of 1812. Two grandsons were officers in the Confederate Navy, one of them fitted out the "Alabama." His great-grandson, ex-President Roosevelt, was Lieutenant Colonel of the Rough Riders in the war with Spain, and Colonel Roosevelt's four sons were all officers engaged in active service in France. Lieutenant Quentin Roosevelt, of

the Aviation Corps, met death gloriously near the old French city of the same name. One of the first officers of the American Expeditionary Force, engaged in service overseas, wounded in defense of liberty, was Captain Archie Roosevelt, the namesake and lineal descendant of this sterling old patriot.

Walton, the Secretary of the Provincial Congress and one of the three immortals who signed the Declaration of Independence on behalf of Georgia, was a Lieutenant Colonel of the Continental Line. He was wounded and captured in the fighting around Savannah, where he served with conspicuous gallantry. After the war he filled with ability and most acceptably the high offices of Governor for two terms, United States Senator and Representative in six Congresses, was twice Chief Justice, and after that office was abolished by the new Constitution, was for fifteen years Judge of the Superior Court.

Georgia should have had four signers of the Declaration instead of three. But John Houston, son of Sir Patrick, who was a member of the Continental Congress was compelled to return to Georgia to combat the intrigue of the Rev. Dr. Zubly, who had turned royalist, and so was absent when the great charter of liberty was signed. He had been a conspicuous member of the first Provincial Congress. As Governor and commander-in-chief of the militia, Houston headed an expedition for the invasion of Florida, then owned by England and from which Georgia was constantly menaced. But disagreement arising among the officers, the enterprise was abandoned. He, too, became Chief Justice of Georgia, and afterward Judge of the Superior Court.

Two other lawyers were members of the first Provincial Congress, John Glen and William Ewen. Both were members of the Council of Safety, Ewen for some time its President, and active participants in the stirring events of the times. Glen was elected the first Chief Justice of the State and later became Judge of the Superior Court.

White, in his "Historical Collections," says of Ewen: "He was among the first of that immortal band who took up arms in defense of American liberty." But no record of active military service of either Ewen or Glen has been preserved.

One of the early escapades of the war was the breaking open of His Majesty's magazine and the seizure of the powder stored therein and so much needed by the patriots. Some of this powder was sent to the army, then encamped in the vicinity of Boston, and was used in the Battle of Bunker Hill. Two of the leading spirits in this adventure were young limbs of the law, William Gibbons and John Milledge. Gibbons, after the war, was rated by General Jackson as the foremost lawyer in the State, enjoying an income of three thousand pounds per annum.

John Milledge fought in defense of Savannah; when the city fell, fled with James Jackson into South Carolina, where they barely escaped being shot as Tory spies; returned to Georgia, and participated in the siege and assault upon Savannah, and in other campaigns. He became Governor of Georgia and presented to the State the campus upon which was erected the buildings of Franklin College, now the University.

Another of the powder magazine party was that staunch Scotch patriot, Edward Telfair, one of the Assistant Justices for the County of Burke. He was a Son of Liberty, a member of the Council of Safety, of the Continental Congress and of the Congress of the United States, and succeeded George Walton as Governor.

John Adam Treutlen, the first Governor of the State, and one of the most active of the early patriots, was also an Assistant Justice.

Captain Benjamin Taliaferro, of the Continental Line, who was engaged in the New Jersey campaign and afterward saw service under Morgan in the South, and was captured at Charleston, was elected to an office for which legal training is usually considered requisite. Though not

a lawyer, the Legislature, after the war, honored him with the commission of Judge of the Superior Courts of the Western Circuit, which position he seems to have filled with entire satisfaction. He was also a member of Congress.

Both of Georgia's delegates to the Constitutional Convention of 1787, whose names are appended to the Federal Constitution, were lawyers and both were soldiers. William Few, Jr., was a Lieutenant Colonel of Richmond County Militia, and participated in the almost daily skirmishes and forays about Augusta. His father, William Few, was a Colonel, and his brother, Ignatius, a Captain of the Continental Line. He was one of our first Senators, a member of Congress, and, like so many other of Georgia's great men, a Judge of the Superior Court.

Connecticut gave to Georgia two of the most illustrious citizens of this early time—Dr. Lyman Hall, a signer of the Declaration of Independence, and Abraham Baldwin, who, with Colonel Few, signed the Constitution of the United States on behalf of Georgia. Educated for the ministry, Baldwin was a Chaplain in the Continental Army. Moving to Georgia at the close of the war, he represented the State in the first four Congresses and afterwards as Senator. As the father of the University of Georgia, he is gratefully remembered by all Georgians.

From first to last, Georgia was represented in the Continental Congress by twenty-five delegates, of whom ten were lawyers and three Associate or Assistant Justices of the Superior Courts. When Governor Wright's Royalist Assembly met in Savannah in July, 1780, seventeen of these delegates were attainted for high treason and their estates forfeited. The number included six of the lawyers and all three of the Associate Justices. Of these lawyer delegates, mention has already been made of Baldwin, Bulloch, Few, Gibbons, John Houston and George Walton, and of Justice Telfair. The other two Justices were Benjamin Andrew, President of the Council of Safety, and grandfather of Bishop James O. Andrew, of the Methodist Church; and

Edward Longworthy, who wrote the first history of Georgia, the manuscript of which unfortunately was lost before it was printed.

The other lawyers were: James Gunn, a Captain of Dragoons during the war, and afterwards Brigadier General of Militia. He was one of Georgia's first Congressmen, and then United States Senator, but his name will ever be associated with the notorious "Yazoo Fraud:"

Lieutenant Colonel Samuel Stirk, who accompanied President Button Gwinnett on his ill-starred Florida expedition, was Clerk of the Executive Council under John Adam Treutlen, the first governor, and later served as Attorney General:

Richard Howley, who had the unique distinction of holding the two high offices of Governor and Congressman at the same time. As a side light on the times, it is interest to know that Georgia currency had depreciated to such an extent that the Governor's expenses to Philadelphia, where he went to take his seat in Congress, cost the State half a million dollars. Howley also served a term as Attorney General:

William Houston, a brother of John, who was twice elected to the Continental Congress, was also a delegate to the Constitutional Convention of 1787, but declined to sign the Constitution. Of only one military event in his life do we have an account. While a member of Congress, a delegate from Rhode Island made some remarks reflecting on the South. The next morning Houston appeared in Congress armed with a sword. Friends intervened, however, and a promising military career was cut short.

One of the greatest names in Georgia history was the soldier-lawyer, James Jackson. But nineteen when the war broke out, he was a volunteer for the very first military enterprise, the capture of the rice-laden ships in Tybee roads. As Lieutenant, Major, and Lieutenant Colonel, he was engaged in practically every battle fought on Georgia soil. He was wounded at Midway, where General Screven was

slain. He assisted in the defense of Savannah. He displayed the utmost gallantry at Kettle Creek. By General Greene's authority he raised a mixed legion of infantry and cavalry, which joined the French and American forces at the siege of Savannah, where his name will ever be linked with those of Pulaski, Jasper, Habersham, McIntosh and D'Estaing. When Georgia was completely overrun by the British and Tories, he crossed over into South Carolina, and at the Battle of Cowpens again distinguished himself for bravery and skill. He performed valiant service at the siege and capture of Augusta. He was with "Mad Anthony" Wayne operating before Savannah when the British at last evacuated the place, and in token of his distinguished services he was appointed to receive the keys of the city. After the war he became a Brigadier, then Major General of Militia. His military record, conspicuous and brilliant as it was, is lost sight of in the great service rendered his State in times of peace. As he fought in every battle, so he held every office in the gift of the people, Congressman, Governor,\* Member of the Constitutional Convention of 1798, United States Senator, which last office he resigned to attack in the Georgia Legislature the iniquitous "Yazoo Fraud."

This record would not be complete without mention of the redoubtable Colonel John Dooly. His activities in upper Georgia at the time when the State was in complete control of the British did much to keep alive the fires of liberty and won for him the title of "The Terror of the Tories." While he did much to check the atrocities of the Tories, he at last fell a victim of their hatred, being foully murdered in his own home. Whether Colonel Dooly ever read law, the record does not disclose, but he was appointed Attorney General to represent the State at the first Court of "General Sessions or Oier and Terminer and General Goal Delivery," holden in and for the County of

\*Shortly after the war General Jackson was elected Governor but declined to serve on account of his youth and inexperience. In later life he was again elected and this time accepted.

Wilkes, at the house of Jacob McLendon, August, 1779, and he made a record of which the most bloodthirsty solicitor might be proud, securing the conviction of nine prisoners for capital offenses. They were all duly and regularly hanged by the neck until their bodies were dead, dead, dead.<sup>10</sup>

Born amid the shock of arms, John McPherson Berrien first saw the light on the 23rd of August, 1781, at the residence of his paternal grandfather, near Princeton, New Jersey. That grandparent was one of the Justices of the Supreme Court of that infant Commonwealth, and a friend of Washington.

Major John Berrien, the father, was an officer in the Continental Army, and his mother, Margaret McPherson, was the sister of John McPherson, who as an aide-de-camp to General Montgomery, shared with him a soldier's death before the walls of Quebec.

Shortly after the evacuation of Savannah by General Alured Clarke and the King's forces in June, 1782, Major Berrien, who during the war of the Revolution had seen service in this State on the staff of Brigadier General Lachlan McIntosh, removed with his family from New Jersey and fixed his home in the commercial metropolis of Georgia. In the impoverished condition of the Commonwealth, and in the absence of suitable educational advantages at the South, anxious that his son should obtain the best instruction the country then afforded, Major Berrien sent him to school both in New York and in New Jersey. His collegiate studies were pursued at Nassau Hall, and from this institution he received his degree of Bachelor of Arts at the early age of fifteen.

Returning to Georgia, he entered the law office of Hon. Joseph Clay, son of a member of the Continental Congress and Deputy Paymaster-General in the Southern Department; himself an eloquent advocate, afterwards advanced to the bench of the United States Court for the District of

Georgia. At a later period, laying aside his judicial robes, Judge Clay entered the sacred ministry and became a famous American pulpit orator.

His eighteenth year was not completed when Mr. Berrien was called to the bar.<sup>18</sup> In Georgia history few names hold higher place than that of Judge Berrien, a most accomplished lawyer and Judge, Senator and Attorney-General of the United States.<sup>19</sup> By the country at large, he was saluted as the American Cicero, and of him, when responding in behalf of the Supreme Court of Georgia to the memorial submitted by the Savannah Bar, Chief Justice Lumpkin exclaimed, "As a lawyer and a citizen who will dispute with him the premiership?"<sup>20</sup> While his conspicuous public career belongs to a later period, he was a product of Eighteenth Century Georgia.

#### THE JUDICIARY 1777-1800.

Upon the recapture of Savannah by the British, Chief Justice Stokes returned with Governor Wright and again opened court, and there are numerous entries in the Narrative relating to legal matters during that period. James Robertson was the Attorney-General under the British. In the siege of Savannah, in 1779, by the French under Count D'Estaing, a shell destroyed Stokes' house, killed three and seriously wounded three others of his slaves. When the city was captured he escaped and returned to England (see letter to him from Joseph Clay, 8 Ga., Hist. Sec. 254), where his salary of 500 pounds was paid for a year or two and then he wrote his most celebrated book, "Constitution of the British Colonies in America."

Stokes's Work contains a valuable chapter on the organization and practice of the courts of Georgia, both before and after the Revolution, and with that curious mixture of the unimportant with the important he gives (p. 190) the "Rules of Precedency for the Settlement of the Precedency of Men and Women in America."

When Stokes left Georgia, John Glen was elected first Chief Justice of the State, with a salary of 300 pounds. But as all of the Court records have been lost there is nothing in Georgia relating to his administration of the office. However, a copy of the record in *John White vs. Peter Knight*, tried by "The Honorable John Glen, Esquire, Judge of the Court of Admiralty of the State of Georgia," has been preserved, which is probably the oldest complete record of a judicial proceeding in the State. The case grew out of the capture and seizure of the sloop *Polly*, and involved the title to the boat and cargo. The finding was in favor of the libellant. The case was appealed to the Continental Congress and was referred to a Committee consisting of James Wilson, John Adams, Thomas Burke. They affirmed the judgment. Few of us realize that at one time the Superior Court of this State exercised Admiralty jurisdiction and that appeals were allowed to the Continental Congress. But that case is mentioned in books discussing the facts leading up to the organization of the Supreme Court of the United States.

Glen was succeeded by Stephens, and he by Wereat.

Upon the recapture of Savannah, in 1782, although desolation brooded everywhere and poverty lay down at every door, the General Assembly, in again putting in motion the wheels of Government and providing for the reopening of the temples of justice,—the doors of which had been sealed for several years,—provided a salary of 500 pounds for the Chief Justice. It will be remembered that while there were then Associate Justices in each county, they were not salaried officers. Their positions were entirely honorary. The Chief Justice rode the circuit of the State, and, unless prevented by Providential cause, presided at all sessions of the Superior Court in each county. As early as 1804 the salary of the Judges of the Superior Courts was fixed at fourteen hundred dollars.<sup>11</sup>

When Wereat's term expired the Legislature not only elected a man who was not a candidate, but one who was

not a citizen. In August, 1782 (3 Rev. Rec. 187) it was "Resolved that the Governor be requested to write to the Hon. Aedanus Burke, Esq., of South Carolina, informing him that this House had elected him to the office of Chief Justice of this State with a salary of 500 pounds sterling." (3 Rev. Rec. 187, 188.)

He did not accept the Georgia appointment and Richard Howley was elected in his stead. (3 Rev. Rec. 380.)

All Court Records of the Revolutionary period appear to have been lost, except those in Wilkes, prior to 1779. The consequence is that we know nothing of the legal history of that time, except that we can gather from the incidental allusions in the Minutes of the Governor and Council. These give us the names of the Chief Justices (John Glen, 1776-1780; Williams Stephens, 1780; John Wereat, 1781; Aedanus Burke, 1782; Richard Howley, 1782; George Walton, 1783-1786; John Houstoun, 1786; William Stith, 1786-1787; Nathaniel Pendleton, 1787-1788; Henry Osborn, 1788-1789; Nathaniel Pendleton, 1789)—and the judges of the Superior Court of the State—George Walton, Henry Osborn, William Stith and John Houstoun—whose commission (2 Miller's Bench and Bar) is interesting in itself and by comparison with the brevity of those now used, when the State has two hundred times as many inhabitants.

When the State was divided into Circuits, the Eastern (Home) was in the southern part of the State; the Middle in the central part, and the Western in the northern part, from which it has been suggested they were named after the English circuits, and not with reference to their geographical position. (Watkins' Digest, 480, 620.) The judges, up to 1799, of the Eastern Circuit were William Stephens, John Glen, David Mitchell; Western, Thomas Carnes; Middle, George Walton and William Few, the latter of whom, while in the Legislature, introduced, but without securing its adoption, the first local option law ever offered

in Georgia, proposing that it should be left to the voters to determine whether the court house of Richmond County should be located at Kiokee, Brownsville, or Augusta. (3 Rev. Rec. 565.)\*

The Circuit Judge in Georgia was a splendid figure in the epic era of our commonwealth, when unfettered by a code, unenlightened and befogged by a maze of decisions through which to search for the last one on the point at issue, he drew for judgment on the rich treasury of the common law, and listened to the rare eloquence of a royal race of advocates who came to the forum fresh from communion with nature in her wild, uncultured beauty. But of their labors little is left of record.\*\*

To complete the list of the Eighteenth Century Bench, it is proper to call attention to the fact that for a time, as in some of the States prior to 1860, laymen presided in the Superior Court, as Assistants to the Chief Justice, when he was present, and by themselves when he was absent. This was an outgrowth of the English custom, followed during the Colonial time, of putting the Governor, Chief Justice, Assistant Justices, Attorney General, and leading men of each Parish in the Commission of the Peace. After the Revolution, these men were authorized to sit with the Chief Justice and in his absence to hold the Superior Court.\*

These Assistant Judges were laymen, and nominated for their high standing and influence in the community, they claimed and received neither salaries nor emoluments.<sup>11</sup>

#### SOME EIGHTEENTH CENTURY JUDICIAL PROCEEDINGS

The very oldest judicial record in Georgia contains the minutes of a court held by three Assistant Judges in 1779. The record shows that:

"AGREEABLE To an Order of his Honor The President, and the Honorable The SUPREME Executive Council for the State aforesaid past the Council Chamber at Augusta the——day of August 1799—

A COURT OF GENERAL SESSIONS OR OIER AND TERMINER  
AND GENERAL GAOL DELIVERY,

"Begun and held at the house of Jacob McLendons on the twenty-sixth day of August 1779, Before the Honorable William Downs, Benjamin Catchings & Absalom Bedell, Esqrs., Assistant Judges for the county aforesaid."

Among other things the Grand Jury, Stephen Heard being Foreman, and Colonel Jno. Dooly acting as Attorney-General, returned an Indictment for High Treason, which is celebrated because it was only "as long as your finger." It charged Rials with "High Treason against this State in that he did act in conjunction with the Creek Indians when they were doing Murder on the Frontier of this County last March, it being contrary to all laws and good Government of the said State and to the bad example of others." Rials plead the General Issue not guilty and put himself "on God and his country for Tryall." He was found Guilty.

But the most remarkable proceeding at that term of the Court is the case of James Mobley, indicted for "High Treason against the State, in that he did steal and carry away a black horse of John Garnett some time last June, and that he did also steal, take and carry away 57 head of hogs, the property of Robert Morgan some time in the month of December last." He too plead the general issue, Not Guilty, and demanded Tryall by God and his country. The jury brought in their verdict, "Not Guilty, and so say they all." There was no Bill of Rights and no provisions against double jeopardy, and so "The State's Attorney moved to the Honorable Court that James Mobley should be ordered to be sent to Augusta for further tryall. Not Granted." The Solicitor was persistent, however, and the minutes show that the next day "The Honorable Attorney in Behalf of the State Motioned to the Court that the tryall of James Mobley should be reheard, as he could produce More evidence in behalf of the State to support the charge brought against him. The Court granted the Request

—and “*ordered* That he should be brought to the Barr immediately.” There was a new trial and conviction of the acquitted man. And here we have everything that the most exacting could require. An indictment one day. A trial the next day, and then Mobley and Rials and five others in one sweeping order were sentenced “to be taken to the guard and there kept until September 6, when they are to be hanged by the neck until their bodies are dead.” (See also Gilmer’s “Georgians,” pp. 183-188)\*

But notwithstanding this want of what many would regard as substance, they could not altogether get away from their regard for form, and the clerk having selected a silver quarter and scratched thereon the words, “Superior Court, Wilkes County,” an order was passed by the court that the “device be authenticated as the seal of the court.” July 17, 1790.

On the civil side of this court there are many interesting entries, showing the persistence of common law methods and forms. For example, in a case (Wilkes, 1791) of what we would call Trover for the recovery of slaves, the counsel were probably doubtful as to whether such an action would lie, and adopted the ancient common law procedure known as “Ravishment of Ward,” a form resorted to by Guardians who sought to regain possession of kidnaped wards.

The Richmond County records go back to 1782 and contain many entries that are of interest, because of the old forms and customs they record. For example, a warrant of Hue and Cry, issued in Edgefield, S. C., backed in Georgia, and executed by a Georgia officer, is found on the Richmond County Minutes (Vol. IV, p. 238). The Warrant was issued to arrest the captor and to regain possession of a number of slaves that had been carried away. There is a swing about it not often found in a legal instrument. It is addressed to the Sheriff and all officers and “in the name

\*A complete transcript of the minutes of this the first session of a Superior Court in Georgia which has been preserved is published as an appendix to “The Military Record of the Georgia Bar.” (35 Ga. Bar Assn. Rep. 53.)

of the State command you and every one of you forthwith to raise the power of your precincts, and to make diligent search therein for the persons above mentioned, and also the property, and to make Fresh pursuit and Hugh and Cry after them, from town to town and from country to country, as well by horsemen as by footmen, and to give due notice hereof in writing describing in such notice the person and the offense aforesaid unto every next constable on every side until they shall come to the Sea Shore, or until the said malefactors and felons are apprehended and \* \* \* that you do carry them forthwith before some of the Justices of the Peace in and for the County where he or they shall be apprehended, to be by such Justice examined and further dealt withal according to law. Hereof fail not Respectively upon the peril that shall insure thereon."

The records in the Ordinary's Office in Richmond County show that several old English customs had been transferred to that remote outpost. An Administrator credited himself with "Cash paid for reading funeral service: 1 pound 8." Another paid the expense of an oldfashioned Irish wake (1783, p. 1) and credited himself with "2 kegs of butter biscuit: 1 pound," and "For liquor supplied the Arbitrators: 1 pound 18s. 9d." And another credited himself with "Price paid for rum, at the day of sale." That as you know, being for the purpose of stimulating the bidding!

The Chatham records also contain interesting entries. Blackstone taught that where a foreigner was indicted for anything except treason, he was entitled to a trial by a jury *de mediatate linguae*. It has been held that this law was never in force in America, and yet (Chatham Min. 1792, p. 237, 239) when a Frenchman was indicted for a felony, he was tried by a jury of six Americans and six Frenchmen, the record reciting: "Defendant being a foreigner and not understanding the English language the Court ordered 6 persons of the same nation to be summoned to attend and *a venire de novo*."

In one case, the verdict reads: "We find the prisoner not Guilty, and that his character has been greatly injured" (251). In another a sentence of Banishment was pronounced, it being ordered that the defendant should: "be remanded to jail there to be confined until an opportunity shall be had to transport him to some foreign and other territories than those belonging to the United States, and he is forbid to return to this state during the term of seven years on pain of suffering as the law directs." (60) In Bryant's case (404) for Horse (?) stealing there was a recurrence of the Pious Fraud resorted to to save the prisoner from being hung. The verdict being "Guilty on the third and last count at common law only to the value of two pence, half penny."

There is reference (1782, p. 3) to an indictment for "Uttering seditious words," and several instances in which the Superior Court of Chatham exercised the power of a Court of Admiralty and passed on the question whether captured ships carried the proper flag or were prizes of war. In one case the verdict was "Ship was a flag and the Belinda a prize."

It was not until 1817 that the benefit of clergy was abolished in Georgia. Prior to that time the English rule had prevailed, under which all who could read were treated as clericals and entitled to the Benefit of Clergy; and on being found guilty were generally branded with the letter M (Manslaughter), F (Forgery) or T (Theft), and were then supposed to be turned over to the ecclesiastical power for proper punishment. The ability to read stood a man in good stead; and so the record in Richmond Superior Court (1807, p. 220) recites "We of the jury, find the prisoner guilty of manslaughter. It is therefore demanded of the said Edwards, if he hath or knoweth anything to say wherefore this Court ought not upon the premises and verdict aforesaid to proceed to judgment and execution against him, who saith that he is Clerk, and prayeth the Benefit of Clergy to be allowed him in this behalf. Whereupon, all

and singular, the premises being seen, and by the Court here fully understood, it is considered by the Court that the said Edwards be branded on his left hand, and immediately he is branded in his left hand and is delivered according to the form of the Statute."

The entry in Chatham County is in a little different language.

It appears (Chatham Minutes, 1793, p. 171) that on the trial of Huxford he was found guilty of manslaughter, and "the prisoner being brought to the bar to receive sentence upon his conviction, Mr. Woodruff in his behalf, prayed the benefit of clergy." Thereupon the court proceeded to pronounce sentence as follows: "That you, Ephriam Huxford, be impressed, burned and scorched with the letter M in the brawn of the left thumb now presently in open court, pay the fees of your prosecution and be discharged."<sup>20</sup>

Even a slave could not be murdered with impunity. For we find from the records of Liberty county that in August, 1792, Henry Johnson was convicted of the murder of a negro. The prisoner, being brought before the court, prayed the benefit of the clergy, which was allowed him, and he was directed to be burned in the hand according to law. This being done, the sentence of the court was that he pay to the owner of the slave the appraised value of the negro (the assessment of the fine payable to the owners, rather than to the State, being a relic of ancient law), and in the event of the failure to pay such amount in ten days, it was provided that he be sent to a frontier garrison for the space of seven years to serve in the militia.<sup>21</sup>

And the law was well administered in those early days. If you go to the records of Camden County, you will find two penal sentences there recorded and rendered by Judge George Jones, the one dated 1804 and reading as follows: "The State v. John Jones. Indictment for Cattle Stealing. Verdict of Guilty. Ordered that the prisoner be taken from the bar to the Common Gaol, there to remain and to be taken from thence tomorrow to the Pillory at the hour of Ten

O'clock and there stand in the pillory for the space of two hours, and immediately thereafter publickly to receive thirty-nine lashes on his bare back, and be branded with a hot iron on the right shoulder with the letter "R," and to receive thirty-nine lashes on the bare back at the same place on Saturday the 27th instant, between the hours of ten and twelve o'clock; and also to receive thirty-nine lashes on his bare back on Monday the 29th instant, between the same hours and at the same place, and to be imprisoned for ten days thereafter, and then discharged upon payment of fees;" and the other reading as follows: "The State vs. Samuel King. Indictment for Perjury, and Conviction thereon. The Prisoner being on motion of the Atty. General brought up to the bar to receive sentence, was asked by the Court if he had ought to say why sentence should not now be pronounced, and answering that he had nothing to say, the following sentence was pronounced by the Court: 'It is ordered that you, the said Samuel King, do pay a fine of Twenty Pounds, equal to Eighty-Eight Dollars and Eighty Cents, that you also be confined to the Common Prison of this County for the space of six months to commence from this day, to-wit, the seventh day of March in the year one thousand eight hundred and five: that you henceforth be infamous and incapable of giving your oath in any of the Courts of Record in this State, and if after the expiration of the said confinement you have not goods sufficient to satisfy the said fine of Twenty Pounds equal to Eighty-Eight dollars and Eighty Cents, it is ordered that you then be set in the Pillory in front of said Common Prison and thence to have both your ears nailed.'

Lest some present day humanitarian should conclude that Judge Jones was of a cruel nature, bear in mind that those were the customary penalties—in fact the penalties established by law—for such felonies at that time. Georgia had no penitentiary until 1816, so that it was necessary that penalties be meted out quickly and gotten over with. The country was new, and as is always the case in new countries, crimes against property were punished more severely than any other class of crimes.<sup>23</sup>

## THE BAR

Under the provision of the Constitution of 1777, already quoted, numerous special acts were passed authorizing persons to practice. (Watkins, 329, 378, 406.) But, of course, it was soon found that the Legislature had no creative power and could no more make a lawyer than a doctor by statute. The acts, therefore, generally provided that the applicant could be admitted when he produced to the court satisfactory evidence of his qualification. For example, the Minutes of Chatham (16) show that "on motion of Mr. Stirk the petition of Florence Sullivan was read, including a resolution of the House of Assembly, and it appearing to the court that Mr. Sullivan has regularly served his time, he was admitted and sworn as an attorney." This would indicate that the provisions of II Geo. II, Chap. 22, was treated as of force in Georgia. Indeed, as late as 1783 (8 Ga. Hist. Soc. 183; Memoirs of Judge Rich'd H. Clark, 121), Joseph Clay, in writing of his son's desire to be admitted to the Bar, complains of the requirement that he should be articled as a clerk for five years—"the term preposterously prescribed by law." But that was shorter than the seven-year term which had long been required in England of those who were admitted through the Inns of Court. But it was inevitable that the term and course of study in Georgia should be shorter than in England, and this was finally settled by the first Rules of Court, promulgated in 1790 (3 Min. 84) by Judge Osborne at a session of the Superior Court of Richmond County, re-adopted in Chatham (Minutes, 1792, 364) and in Wilkes (1790, p. 2.) These rules provided:

"The principle of admission of attorneys being a knowledge of the laws and the practice of the Courts, a liberal examination shall be had in these respects, but the mode of interrogation shall be varied, and no person shall be admitted until after twelve months residence."

This was the beginning of the custom of having oral examination in open court, which continued for more than a hundred years. We do not know what were the specific

requirements for admission in Georgia, but the custom in the other Colonies was to pay a fee of \$100 to a member of the bar for the privilege of reading in his office for the required time.

The standard was unusually high. Trained lawyers were on the bench from the very beginning of Georgia's history as a Royal Colony—several members of the Bar had been students at the Inns of Court, and while the Litchfield Law School under Judges Reeve and Gould was in existence, a greater proportion of students attended from Georgia than any other State, population considered.

Judge Richard H. Clark in his *Memoirs* (p. 249) says that it was "the custom for the Judge to set aside some special day or days during a term for the examination of applicants, and to appoint the most eminent lawyers of the court on the Committee. No examination was had except what occurred in open court and that was as thorough as practicable."

Judge Andrews, in his interesting and most valuable "Recollections of an Old Georgia Lawyer," tells us that in those days of formality, the Sheriff wore a cocked hat and accompanied the Judge from one court to the next; and that the lawyers carried green bags, and were known as the gentlemen of the green bag. The rules promulgated by Judge Osborne in Augusta in 1790 republished in Chatham and in Wilkes, contained another instance of the formality of that time, in the proposal to make a distinction between attorneys and barristers, and the requirement that lawyers should be heard in the "Habit of a Black Robe." This rule provides:

"For the sake of a decent conformity to ancient custom and of a necessary distinction in the profession, the attorneys shall be heard in the causes of their clients in the habit of a Black Robe, but this rule shall not apply to those who shall not have provided themselves with such Habits until the second term. A future rule shall provide for the recognizing Barristers and establishing the necessary distinction." (*Minutes Richmond, S. C. 1790, p. 54*)

Mr. Dutcher, in the history of Augusta, (1890) says that for years after 1799 "the Bar wore black silk robes."

The old English custom prevailed of taxing fees of "Solicitors in Chancery," "Proctors," "Attorneys of the Common Pleas," (7 C. R. 29,) as part of the costs.\*

With judges and lawyers coming soon after Oglethorpe left, Circuit Riding along the coast began early in the history of the State, with Savannah furnishing the supply of Circuit Riders for all the coast section. Records of the counties to the south of Chatham all the way to Camden County teem with evidence of the activities of the Savannah brethren of those days. All the coast counties formed one circuit or district; the Eastern district it was called, and the judges for this district were without exception from Savannah.

We may picture the judges and the members of the Savannah bar setting forth on one of their semi-annual pilgrimages to the South. A gallant cavalcade it must have been, clattering along the Post-Road through Chatham to Hardwicke, the county seat of Bryan, thence to Walthourville in Liberty, then on to Darien in McIntosh, crossing the Altamaha to Brunswick in Glynn, crossing the Little Satilla River to get into Camden, then the Great Satilla to Jefferson, the county seat of Camden.

A goodly company and joyous one it was, entertained along the way at the hospitable homes of the planters, with parties of one sort and another at every home, and with evenings given over to quip and jest and merry-making. That was indeed the Golden Age of the Circuit Rider. The planters along the coast, hosts to the visiting lawyers, were educated, cultivated men, fond of good living, knowing how to live, and having all the necessities of good living near at hand, all sorts of fish and shellfish at their front doors, and all sorts of game in their fields and forests. It was such company and such living as this that occasioned the late Judge Robert Falligant to make the declaration famous along the coast: "I would rather be a fiddler on the coast of Georgia than harpist in the Kingdom of Heaven."<sup>22</sup>

## GEORGIA UNDER THE ARTICLES OF CONFEDERATION

At the close of the Revolutionary War, there were barely 15,000 whites in the State. Indeed, the inhabitants were so few that the Constitution of 1777, in providing for the venue of suits, took into consideration the possibility that there might not be men enough in the county to form a jury, in which case the trial was to be in the adjoining county. This sparseness of population is most strikingly shown by the fact that there were only 551 voters in the District and, in the heated election for Congress between Gen. James Jackson and Gen. Anthony Wayne, the total vote was less than 500. But the State was great in potentiality, and between the Declaration of Independence and the ratification of the Constitution, exercised many powers, which now strike us as strange, because we have so long regarded them as National. She levied duties, made paper money legal tender, regulated captures on the high seas, prohibited the importation of slaves and laid a duty on those permitted to come in from other States, tried admiralty cases, passed a patent law, provided for the naturalization of aliens, made a treaty with South Carolina and many with the Indians. Indeed the fact that Georgia had made treaties with the Indians was used as an argument in the Constitutional Convention of 1787 and referred to as proof of the weakness of the Confederation.

Watkins (779) contains Treaties between the State and the Creeks and Cherokees made at Augusta in 1783 and at Shoulderbone in 1786 and also the Treaty with South Carolina concluded at Beaufort in 1787. As to this it may be said that the Committee were instructed to insist on a Boundary line "from the mouth of the River Savannah *along the north side of it*" (283), and the author of the Resolution either quoted it as a phrase then well known or anticipated the substance of what is now on the Georgia shield—the committee being instructed to "proceed with JUSTICE, MODERATION and CAUTION" (3 Rev. Rec. 284.)

Another, and hitherto unknown chapter in the Diplomatic History of Georgia has recently been found by Edmund C. Burnett, Esq., who, in an article in 25th American Historical Review (Oct., 1909, and Jan., 1910), publishes the Documents relating to Bourbon County, showing the appointment of twelve men as Justices of the Peace for the newly established County, embracing a vast extent of land on the Mississippi. Though they were Justices of the Peace, they were given instructions which were most unusual for judicial officers—among other things being authorized to accept and receive from any Spanish officers “full possession in the name and behalf of this State of all such Forts, Towns and Places as may fall within the limits and description of your said county.”

By Act of February 1, 1788, she granted a patent on a steam engine to Isaac Briggs and William Longstreet, and it was probably with this engine that Longstreet, at Augusta, ran the steamboat he was building, and to which he refers in the letter of September 26, 1790, to Gov. Telfair, beginning “Sir: I make no doubt but you have often heard of my steamboat and as often heard it laughed at.” (Gould’s History of River Navigation, 36.)

Georgia passed her own copyright law, with the provision, however, that the copyright should be void if the author did not avail himself of it by publishing a certain number of his work.

Like all the other States, she had issued paper money, and in such quantities that it was “not worth a Continental,” and at one time it took \$14,000 of Georgia money to buy a dollar in gold, and McCall (303) says “the value of paper money was so much reduced that the Governor dealt it out by the quire for a night’s lodging for his party; and if the fare was anything extraordinary, the landlord was compensated with two quires, for which the Treas. required a draft made out in due form and signed by the Governor.” While most of the salaries were fixed on sterling basis, they were sometimes paid in scrip which could be used in the purchase

of confiscated properties sold by the State at public outcry. Sometimes the debt would be paid by the grant of a particular piece of land. Sometimes in salt, which was so valuable as again to illustrate how the word "Salary" came from the Latin "Sal,"—Salt.

Georgia had a tariff law and collected duties on imports, until at the request of the Continental Congress, she waived the right and authorized duties to be imposed and collected by the Continental Congress. She had her own Naturalization laws and admitted non-residents to citizenship. But while she admitted them here, she discouraged the attendance by her sons on foreign institutions and so passed an act that "If any person under 16 was sent and remained in foreign countries three years for the purpose of receiving education under any foreign power he shall for three years after his return be treated as an alien in so far as to be ineligible to hold any office." (Watkins, 303.)

The State also passed an act of Banishment and Confiscation against those who had taken part with the British. This and the other laws above mentioned, and of a kind which now Congress alone can pass, gave rise to litigation before the Georgia Courts of the Eighteenth Century. But the loss of original records and the absence of Reports has left us almost completely in the dark as to the results of the cases brought under these Acts. Indeed, the very existence of such laws has been almost completely overlooked, because of the fact that they are to be found only in rare volumes not in the practitioner's library.\*

#### THE HEAD-RIGHT SYSTEM

Desirous of filling her borders with a thrifty population, on 7th June, in the same year (1777), the new Legislature, to invite immigration, inaugurated the head-right system by passing "An Act for opening a land office, and for the better settling and strengthening this State."

The "Head-right" system, as it is called, takes its name from the fact that its basis of granting lands was

founded on certain rights (per capita) given by the Acts establishing it. By the Act, every free white citizen or head of a family could locate a certain quantity of land, with an additional amount for every free white person or head in the family, and for every negro (head) owned; the entire grant not to exceed a certain number of acres. This land could be located anywhere inside of the counties formed, and subject to some ineffective checks, in any shape desired. There being no regular plan, and no comprehensive survey of the counties showing what was open and what taken, it can readily be seen that in a sparsely settled and densely wooded country, the system was well calculated to invite fraud, mistake and dire confusion.

It would be useless to enter minutely into the provisions of this Act; it was limited as to its time of duration, and expired before the close of the war brought that quiet which was necessary to its active operation.

Another Act, differing only in detail was passed in 1780. It, too, failed of its purpose. But the quiet of the State having become assured by the successful termination of the Revolutionary War, the Legislature again turned its attention to the work of settling its uninhabited territory and increasing its population.

The treaty of peace of 30th of November, 1782, between Great Britain and the United States, transferred by formal cession to Georgia those rights of ownership and jurisdiction over the soil within her limits as far West as the Mississippi, which she had before successfully asserted by the strong arm.

On 17th February, 1783, the Legislature passed "An Act for opening the land office, and for other purposes therein named." It is in it that the name "Head-right" first is met. It, with its amendment of 1st August, 1783, became the fundamental law under which all titles were thereafter issued up to the time of the adoption of the lottery system. Its importance will excuse a full statement of the provisions of these statutes.

By the Act, each master or head of a family was allowed as his own "Head-right" two hundred acres; for each head-right, white or black, in his family, fifty acres more, provided that the whole amount of land did not exceed one thousand acres. This was the limit in all of the head-right statutes, so far as we can find, and is important to be remembered. For these lands was charged, for the first one hundred acres, one shilling per acre, and six pence per acre for the excess.

All citizens of Georgia, or of the other States proposing to settle in Georgia, were allowed to take advantage of the Act. Persons who had received lands under former grants for the same head-right which they now presented, could not obtain lands. A twelve month's settlement and the improvement of three acres out of every hundred was a condition precedent to obtaining a grant or to the right of disposing of the lands, except by will. During the war, Georgia had granted many land bounties to her soldiery. These could be claimed under this "Head-right" law. The manner of obtaining the grant was as follows:

Every applicant for head-rights went before the Land Court for the county where the land lay which he desired to obtain. These Land Courts were curious features of this system—its foundation stones in fact. From them proceeded all warrants. They alone could put the machine in motion. They were at different times differently constituted. In the Act for laying out Washington and Franklin counties, the Governor or President of the Executive Council (a body then existing in Georgia), with certain members of the Council, constituted the Court, and met at Augusta. This, however, was temporary, and the Land Courts of these counties were made the same as throughout the rest of the State.

By the Act of 1783, a majority of the Justices of the Peace in each county were the Court, the oldest in commission presiding. By the amendment of 1st August, 1783, four Justices and an Associate Justice of the Superior Courts

constituted the Land Court. By an Act of 1789, three or more Justices of the Peace were the Court. This Court met at the county site at stated times to receive applications for land warrants. Before it the applicant went and took the oath prescribed by the Statutes, attesting his right and negating the idea that he fell among the exceptions to those entitled. He also was required to produce a satisfactory certificate of good character.

If his case was made out, he received his warrant, which he presented to some one of the authorized surveyors to survey for him his lands. These were described as far as possible in the warrant. Any person having good ground of objection might file a caveat with the county surveyor, who gave thirty days' notice thereof, by advertisement, before its determination. It was tried by a jury of twelve freeholders drawn from the by-standers by the Land Court, and it proceeded at once to hear and determine the caveat. At first its verdict was final, but soon an appeal to the Governor and Council was allowed. If the caveat was overruled, the survey proceeded.

The State had her surveyor-general, each county its county surveyor; the officers were all elected by the Legislature. The county surveyor could appoint assistants. When a warrant was lodged in the hands of the county surveyor of the county where the land lay, or a deputy, he surveyed the lands and made a plat thereof. This survey and plat was ordered to be recorded in the county surveyor's office within two months from the date of the warrant. A copy survey and plat with the warrant was ordered sent within three months from the date of the warrant, to the surveyor-general. The applicant then paid the purchase money (if any) to the Treasurer, and upon production of a certificate of such payment from the Treasurer, the surveyor-general recorded the plat, and sent on the papers to the Secretary of State.

Here the grant was then drawn and presented to the Executive for signature. When signed it was returned to

the Secretary of State, sealed with the Great Seal, and registered. The grant was then sent to the county surveyor to be recorded in the county records and then delivered to the grantee.

Warrants heretofore issued under other laws passed since the Revolution were required to be brought in. If done within the time prescribed, they were protected; all bona fide settlers who had entered on these lands under the invitation of prior Acts and executive proclamations thereunder were likewise protected. The county surveyors were to send up to the surveyor-general the plats and surveys made at least once every two months and were also to send up monthly all caveats; these were to be laid before the Governor and Council for information in issuing the grants.

Grants, surveys, settlements or warrants on lands not ceded by the Indians, were, by all the land Acts, null and void, and prohibited under penalties.

The Act prescribed the form of grant to be used. By the Act of 1789 the Governor was authorized to alter this form. This he did by omitting therefrom, all mention of the Executive Council, which had been abolished. Except as then changed, the form of grant as therein provided, remained the same for head-right lands. That form recites the Act of 1783, as the authority for the grant; it conveys the land, with all of its appurtenances in fee simple, by allodial tenure, to the grantee.

Such was the head-right system of Georgia. When we look at the unsettled condition of the counties where it was to take effect, the nature of its land courts, the unlimited authority of the county surveyor to appoint assistants and the ease with which certain by-standers could always be on hand to be the jury to try caveats, it is evident that such a system afforded a tempting field for the unscrupulous land speculator.

By treaties made with the Creeks and Cherokees, in May and November, 1783, the Indian title was extinguished to that portion of the State lying within the present Southern boundary of Habersham county, and a line drawn from

the Western extremity thereof to Hog Mountain, in Gwinnett county, and thence down the Apalachee, Oconee and Altamaha Rivers to the then limits of the organized part of the State, with the organized counties, embracing every foot of land between these lines, the rivers named, the ocean and the Savannah river. This territory, by the Act of 1784, was organized into the counties of Washington and Franklin, and head-rights under the above system with but immaterial alterations offered.

Lands between the Oconee and Middle Rivers were, for twelve month, reserved for the soldiers and sailors and a few other immaterial provisions were made.

Citizens of other States had to acquire residence within twelve months, in Georgia. Forty thousand acres of land, twenty thousand in each county was set apart for the benefit of the University, to be founded and marks the beginning of the University of Georgia. By this Act all requirements for cultivating lands, granted or to be granted, are abolished. Grants could not exceed one thousand acres, nor could they issue but once for the same head-right. By the Act of 1785, the lands in Washington and Franklin were put on like footing with the lands in all the other counties, and the vacant lands in all the counties made subject to head-rights alike. The Act of 1783 was affirmed, except that for the lands acquired thereunder as far as the quantity of one thousand acres (the extreme limit) no purchase money was to be charged, but only office fees. A treble tax was required unless three acres per hundred was settled on and cultivated within three years.\*

#### THE STATUS OF MARRIED WOMEN

In 1784 the Legislature of Georgia passed a law known as the Adopting Act. This statute adopted the common law and the statutes of England of force on the 14th day of May, 1776, so far as they were not contrary to the Constitution and laws of Georgia and the form of government established in this State.

Let us consider the civil status of married women as it existed under this Adopting Act, and under another Act of the Legislature of Georgia passed 1789, in reference to the estates of married women.

By the common law, the wife's chattels real and choses in action, on intermarriage and so soon as he reduced them to possession, vested absolutely in the husband. As to chattels personal or choses in possession which the wife had in her own right, such as ready money, jewels, household goods, and the like, the title to them on intermarriage, without further action, vested immediately in the husband, and the title thereto never again revested in the wife or her representatives.

The Act of 1789, referred to, provided that in all cases of intermarriage since the 22nd of February, 1785, the real and personal estate of the wife shall become vested in the husband. Real and personal property was by this Act placed on the same footing and both kinds of property descended and was distributed alike. So that by the common law and the Act of 1789, the husband became the absolute owner of the property of the wife, real and personal, owned by her at the time of marriage. As far as the law could make it, her legal existence was merged in his.

He was entitled to her earnings, to all moneys made by her by keeping a boarding-house, baking bread and cakes, and selling them, by sewing, and to the proceeds of her labor of every kind. (*Wood v. Wilson Sewing Machine Co.*, 76 Ga., 104.)

She was required to keep house for him and to rear his children, and if her behavior did not conform to his views he had the right to chastise her provided he did not strike her with a stick larger than his thumb. Her jewels and personal ornaments vested absolutely in him on marriage. In return he became liable for her debts existing at the time of the marriage, and he was required to furnish her with necessities, such as food and raiment.\*\*

## THE BEAUFORT CONVENTION

The Savannah River was formed by the confluence of the Keowee and Tugalo Rivers; the Tugalo was the bolder stream, and discharged the greater water, but the Keowee was the longer and reached a latitude farther north. It was the head source of the Keowee that Georgia claimed as the beginning of her northern boundary, the point at which her northern boundary began its westward stretch to the Mississippi River. This contention on the part of Georgia brought about the dispute with South Carolina, and at this point Georgia's boundary troubles began in earnest.

It would appear that when, according to the claim of South Carolina, the Province of Carolina was divided in 1732 into North and South Carolina, that South Carolina became possessed of, or rather claimed, a strip of land lying between North Carolina and Georgia from twelve to fourteen miles wide and about four hundred miles long. This claim upon her part was made in construing Georgia's charter from the Crown. She contended that Georgia's northern boundary began at the fork or confluence of the rivers Tugalo and Keowee and where those rivers lose their respective names and the river Savannah begins. Georgia's claim, as heretofore stated, was the head source of the most northern of these streams forming the Savannah River.

Under the 9th Article of the Confederation of the States was provided the manner in which one independent State could sue another, with reference to their boundary rights. Such suit should begin by petition in the name of the litigant State to Congress, and a federal court should be provided to hear the cause and determine the question in dispute. Under this 9th Article of Confederation, South Carolina, by and through her agents and representatives in Congress, filed suit against the State of Georgia in Congress on June 1st, 1785. (Journal United States in Congress Assembled, Vol. 10, folios 189, 190, 191, 192,) Notice

of this suit was given to Georgia by the Secretary of Congress, and the second Monday in May following was set for Georgia to appear and answer, but it was not until September of that year that the answer to such suit was filed in Congress, and it was therein asserted and announced that South Carolina had proposed an amicable adjustment through commissioners to be appointed from both States. She, however, submitted herself to the will of Congress. The court to try the cause was named by Congress in the following manner: The names of three persons from each of the thirteen States were enrolled, and from the list thus composed each litigant alternately struck one name until thirteen were left. The names of these thirteen were then placed in a box and nine of them drawn out by lot. This nine composed the court to try the cause, and the third Monday in June, 1787, was fixed for the court to hear the case in New York.

As set forth in the answer of Georgia in Congress to the suit of South Carolina, the latter State had proposed a joint commission of the two States to amicably adjust their boundary limits, both on the north, east and south. The convention was agreed upon by both States, South Carolina naming as her commissioners Charles Cotesworth Pinckney, Andrew Pickens and Pierce Butler; Georgia named as her commissioners Lachland McIntoch, John Houston and John Habersham. In the archives of the Secretary of State's office will be found the very interesting correspondence between Georgia's then Governor, George Matthews, and her commissioners, and between the commissioners of the two States, arranging for the preliminaries of the convention, and the final report of their proceedings. The Georgia commissioners had full, plenary powers. By agreement the convention met at Beaufort, South Carolina, on April 24th, 1787. The commissioners of both States presented their credentials which, by each, were inspected and approved. Each State then presented its claim and conten-

tion, and these claims and contentions were discussed and warmly debated and considered on the 25th, 26th, 27th and 28th days of April, and finally on the latter date they came to an agreement, the same being concurred in by all three of the South Carolina commissioners and by two of the Georgia commissioners, John Houston, of Georgia, dissenting from the findings. Mr. Houston did not think that there was any question whatever as to Georgia's territorial limits, and did not desire to concede anything to South Carolina, even for the purpose of an amicable adjustment. His dissent, filed with the report in the Secretary of State's office, affords very interesting reading. Both States made concessions for the avowed purpose of bringing about cordial and friendly feelings between the two States. In the agreement, South Carolina ceded her claims on the south of Georgia—Mr. Houston claiming that South Carolina had none—and Georgia agreed to accept as her northern boundary the head or source of the river Tugalo and the most northern branch thereof. This river, while the shorter, was the bolder of the two streams forming the Savannah. South Carolina was to take the territory lying between these two rivers and was to be entitled to the free navigation of the Savannah River. This finding was reduced to writing, signed by all the commissioners save Houston, whose dissent accompanied the findings. The findings of this convention were reported to the respective Governors of the States and were afterwards adopted. The agreement as to the northern boundary, in exact language, was as follows: "The most northern branch or stream of the river Savannah from the sea or mouth of such stream to the fork or confluence of the rivers now called Tugalo and Keowee, and from thence the most northern branch or stream of the river Tugalo until it intersects the northern boundary line of South Carolina, if the said branch or stream of the Tugalo extends so far north, reserving all of the islands in the rivers Tugalo and Savannah to Georgia; but if the head spring or source of

any branch or stream of the said river Tugalo does not extends to the highest northern latitude, shall forever here-line to the Mississippi to be drawn from the head spring or source of the said branch or stream of Tugalo River which extend to the north boundary of South Carolina, then a west after form the separation limit and boundary between the States of South Carolina and Georgia."

It would naturally have been presumed that this would have terminated the controversy, but it was not so to be. It is true that the report and findings of the convention were not only reported to the respective States, but were likewise reported to Congress, and the suit of South Carolina against Georgia therein pending was abandoned, but it was a travesty on the good faith of South Carolina, the Hotspur State, that on the very day this report was filed in Congress, that State, through its delegates and representatives in Congress, by legislative authority, ceded to the Federal Government, and executed deed thereto, the identical territory that she claimed to have released, and did release, to Georgia in the convention held at Beaufort. The report, as stated, of the findings of the Beaufort convention was filed in Congress and there referred to a committee, and it was, so to speak, "pigeon-holed," being shelved by reference to a committee, and no action has ever been taken thereon, but the deed and cession of the territory was, on the day it was offered, accepted by Congress. So it would appear that Georgia had neither gained nor lost anything by the Beaufort convention, except that she apparently gained the ill-will of South Carolina, and the dispute was thus transferred from that State and was henceforth to be taken up with the Congress of the United States. It has been said that this action on the part of South Carolina was with the view of forcing Georgia to cede her territory west of the Chattahoochee to the Federal government, but it has likewise been charged to pique and ill-will. But in any event, it was not an exposition of, let us say, at least, good faith, and in this regard it

would likewise appear that the Federal government occupied no higher and no better position than that of South Carolina. The Federal government was, under the suit brought under the 9th of the Articles of Confederation, the court in which was to be determined the controversy between two sister States, yet the Court—the government—accepted the territory which was under dispute to the detriment of one of the litigants. It is charitable to say that it was very worldly, if not very just. It was not, however, an act that brought to her any good results. This cession of South Carolina, if her claim to the territory was valid, conveyed to the Federal government a strip of land twelve to fourteen miles wide by four hundred miles long, and became a block in the shape of a parallelogram between the States of Georgia and North Carolina. Thus matters stood for some time.

On February 17th, 1783, Georgia, through her legislature, passed an act offering to cede her western territory to the United States. This offer was, in 1788, declined by Congress because of the conditions imposed. Subsequently, and because of the Yazoo Frauds of 1789 and succeeding years, a bill was filed in Congress looking to and providing for the cession by Georgia of all of her territory west of the Chattahoochee to the Mississippi River. Commissioners were appointed by the United States and by the State of Georgia, who conferred as to the terms of the cession. In the proceedings of the Seventh Congress, (published in "American State Papers and Public Laws," Vol. 1, folio 125, for the years 1789 to 1809), will be found a communication from Thomas Jefferson, then president of the United States, to Congress under date of April 26th, 1802, transmitting the agreement entered into between the commissioners appointed upon the part of the United State and Georgia, as to the cession of lands by Georgia to the Federal government. In conformity with the terms of this agreement, Georgia subsequently ceded to the United States her territory west of the Chattahoochee, out of which has since been carved the States of Alabama and Mississippi.

'And here is where Georgia "got even," so to speak, with the Federal government in accepting the cession from South Carolina. This western territory was flooded with the claims growing out of the Yazoo Frauds, and it became necessary for the Federal government to settle all of these disputes. Georgia was covered and quilted with Indian claims: it became necessary under this agreement for the United States to extinguish all Indian titles in Georgia's territory, and it became, in addition thereto, necessary for the United States government to pay Georgia one million and a quarter dollars, and to cede to Georgia "whatever claim, right or title they may have to the jurisdiction or soil of any land lying within the United States and out of the proper boundaries of any other State, and situated south of the southern boundaries of Tennessee, North Carolina and South Carolina, and east of the boundaries hereinbefore described." It was a very expensive cession of territory to the United States and Georgia was immensely benefited thereby.\*

#### THE WESTERN BOUNDARY

There seems to have been an understanding that all the States would, after the Revolution, surrender to the general government their unoccupied lands, then called "back land," for the general welfare. (See 13 Howard, 398.) We were the seventh and last State to make such surrender. After much and long negotiation it was accomplished. In April, 1798, the United States began and in 1880 completed the legislation under which our compact of 1802 was perfected. By it our western boundary was the Chattahoochee River, "running along the western bank thereof, to the great bend thereof, next above the place where the Uchee river empties into said river; thence in a direct line to Nickojack on the Tennessee river," etc..

Dr. Miller once told an anecdote about that bend. When asked how it happened that so many places on the

other side of the Chattahoochee River are in Georgia whereas the Chattahoochee itself is generally understood to be the boundary, he said that the surveyors reported to the governor that if they commenced at what was commonly known as the "big bend," where the Uchee river comes in, it would leave a good deal of the Chattahoochee River in Alabama, because, running a straight line from that bend to Nickojack, everything had to conform to that line. The governor said: "We must have all the river. Go lower down and find another bend." And so they did, and so we got the land. This is repeated as history from Dr. Miller, a historian of the first water.

In consideration of that cession of lands by Georgia, the rights of our citizens to their lands in Bourbon county, at the fork of the Yazoo and the Mississippi, established in 1785 and by us repealed in 1788, were protected. The United States was also to extinguish the Indians title to the country of Tallassee (now part of South Georgia) and other specified lands; and the United States therein stipulated that the land ceded by Georgia should form "a State and be admitted as such into the Union" when it acquired sixty thousand population. Georgia ratified this compact by act of June 16, 1802. The contract was that the ceded territory was to be made "a State" (one State), but of course when the South wished for four senators in Congress instead of two, we readily agreed to dividing the territory into two States.<sup>5</sup>

#### THE FEDERAL CONSTITUTION RATIFIED

Georgia ratified the Constitution of the United States on January 29, 1788. The people of this State may well take a proud satisfaction in the fact that Georgia was the fourth State to ratify the Constitution. While other States were holding back and bickering over the sacrifices, real or imaginary, which they were required to make for the common good, the Convention called by the Legislature of this State promptly and unanimously, "for themselves and

for the people of Georgia, fully and entirely assented to, ratified and adopted the proposed Constitution," hoping that their ready compliance would "tend to consolidate the Union" and "promote the happiness of the common country."<sup>20</sup>

#### THE CONSTITUTION OF 1789.

While the provision as to amendment contained in the Constitution of 1777 seems to be exclusive and exhaustive, the Assembly on January 30, 1788, provided by resolution for the assembling of a convention to consider alterations and amendments to the constitution, to convene so soon as official information was received that the Constitution of the United States had been ratified by nine states; and proceeded itself to select the delegates to such convention. The convention assembled in Augusta on November 4, 1788, adopted a constitution, providing that it should not take effect until revised by another convention, created under a resolution of the Assembly, made up of delegates chosen by the people of the several counties. This second convention met in Augusta on January 4, 1789, and proposed certain alterations. These alterations being reported to the Assembly, a third convention was called to convene in Augusta on May 4, 1789, to consider the constitution and the proposed alterations. The third convention in a session of three days ratified the constitution as reported by the second convention. Thus came into existence the constitution known as the Constitution of 1789.<sup>21</sup>

This Constitution is the first which set forth in separate articles the different subjects of which it is composed, and contained in Article IV. the sections intended as a declaration of "fundamental principles." These sections are as follows:

"Freedom of the press and trial by jury shall remain inviolate. All persons shall be entitled to the benefit of the writ of habeas corpus. All persons shall have the free exercise of religion, without being obliged to contribute to

the support of any religious profession but their own. Estates shall not be entailed, and when a person dies intestate, leaving a wife and children, the wife shall have a child's share or her dower at her option; if there be no wife, the estate shall be equally divided among the children and their legal representatives in the first degree; the distribution of all other intestate estates may be regulated by the law."

The provision of the Constitution of 1777 as to clergymen is found in this Constitution also, but as a part of the legislative department.

The plan of a single body, composed of members elected yearly from each county, was abandoned after a trial of twelve years, and the "House of Assembly" was divided into two bodies called a Senate and House of Representatives. The members of the Senate were elected one from each county for a term of three years. The members of the House of Representatives were elected from each county annually.

It provided for the election of a Governor biennially in the following manner: the members of the House selected three persons from whom the Senate elected the Governor. His powers under this Constitution were greatly enlarged; he could respite in all cases except cases of impeachment; he could grant pardon in all cases after conviction, except those of treason and murder; he could veto legislation, his veto to be conclusive unless overcome by a legislative majority of two-thirds.

This Constitution provided that Superior Courts should be held twice yearly in each county, and should have jurisdiction of all cases, civil and criminal, except such as might be referred to inferior courts. The Judges of the Superior Court were elected by the General Assembly and their term of office fixed at three years. By this Constitution, judges were allowed to grant one new trial in all cases tried by them, and no more. The limitation on the power of the Legislature to increase or diminish the salary of the judges

of the Superior Court during their term of office (found in all of our Constitutions but the first) was a part of the Constitution of 1789.<sup>16</sup>

The electorate was greatly enlarged; there was no limitation as to representatives except as to citizenship, residence, age, and the payment of taxes for the year preceding the election; the words "or being of a mechanical trade" were omitted. No man could be a Senator unless he "should be possessed in his own right of two hundred and fifty acres of land, or some other property to the amount of two hundred and fifty pounds;" nor a member of the House of Representatives unless he should "be possessed in his own right of two hundred acres of land, or other property to the amount of two hundred and fifty pounds." The words of the Constitution of 1777 that these officers be of the Protestant religion were omitted.

Property qualifications were extended to the office of Governor. No one could be Governor who did not "possess five hundred acres of land in his own right within the State, and other specie of property to the amount of one thousand pounds sterling."

The Georgians of that day held that a man would perhaps make a better Governor who had in his own affairs shown evidence of energy, efficiency and thrift. The land and other property was to be in his own right, and not in the right of his wife.

The old limitations of power of the government were retained in the Constitution of 1789, and new restraints were added:

"All powers not delegated by the Constitution, as amended, are retained by the people."<sup>16</sup>

It was provided in this constitution that at the election for members of the Assembly in 1794 the electors in each county should elect three persons to represent them in a convention for the purpose of considering alterations to be made in the constitution, such convention to be held at such time and place as the General Assembly should appoint. There was no other method of amendment provided.<sup>17</sup>

## MCGILLIVARAY AND THE TREATY OF NEW YORK

Alexander McGillivaray was the son of a Scotch Indian-trader; his mother was a half-breed; her father was Capt. Marchand, of the French service, and her mother a woman of high rank in her tribe, so that he had within his veins the blood of the Scotchman, of the Indian and of the Frenchman. Out of that strange mixture, there grew a marvelous personality, who, in his diplomacy, more nearly resembles Talleyrand than does any other American-born character known to history. He obtained and held almost, if not entirely, to the end of his days, an enormous ascendancy over the Creek Indians. These Indians were known as the "Upper" and the "Lower" Creeks. The "Upper" Creeks had for their seat a place near what is now Wetumpka, in the State of Alabama. The "Lower" Creeks extended far down into the peninsula of Florida.

McGillivaray held a commission as Colonel in the British Army; he held a commission from the Spanish Court; he finally held a commission as General from George Washington himself. While he received the pay and the emoluments of a British Colonel, he was active in having the Indians align themselves with the British, and incited them to all manner of depredations upon the settlers of these United States.

A treaty at Augusta was negotiated with the Creek Indians in November, 1783. Under this, lands were ceded to the Oconee River. McGillivaray never recognized that treaty; he said it was made by two chiefs who acted under duress. A further treaty was negotiated from the town of Louisville. General Elijah Clark took a forceful part in the negotiations which brought about this treaty.

Under the treaty of Galpinton, the Creeks ceded lands to extend from the forks of the Oconee in a southwestern direction to the source of the St. Mary's.

On November 3, 1786, the treaty of Shoulderbourne was negotiated. This took its name probably from the creek on which it was negotiated. There was no cession of

lands by this treaty, but it was one of amity and friendship. There was, however, no amity or friendship brought about by it.

President Washington, upon reports to him of many aggressions by the Indians, came near determining upon an Indian war, but he desired to make one more effort before doing this, and he sent an agent to the Indians, and especially to McGillivray. McGillivray felt greatly complimented that the President of these United States should have sent a special envoy to him in person. The result of this was that McGillivray and twenty-three other chiefs, accompanied by a number of their warriors went to New York, and the treaty of New York was negotiated on August 13, 1790. It was supposed that this would make a lasting peace between the Indians and the Americans. The Americans, however, were incensed over it because it required them to recognize the Indians as owning on the west bank of the Oconee. The Indians were incensed over it, because it required them to recognize the cession of lands up to the Oconee, and also because it required them to make restitution of horses and property and negroes which they had stolen from the whites, and as well of prisoners taken by them. The result was, that this treaty which was looked forward to as the solution of the relations between the Indians and the Americans, proved to be another "bone of contention."<sup>22</sup>

#### GEORGIA *v.* BRAILSFORD

Georgia, in May, 1782, passed an act inflicting penalties and confiscating the estates of certain persons declared guilty of treason. There were a number of clauses to the act, specifying the different classes of persons upon whom it should operate and to what extent—the word *sequester* being at times used, and at other times the word *confiscate*. Brailsford, a British subject, and Hopton and Powell, citizens of South Carolina, owned a bond for over \$35,000 against Spalding, a citizen of Georgia. They had instituted suit in the circuit court of the United States for the district

of Georgia on the bond and had recovered a judgment. Gov. Telfair claimed that this debt had been confiscated by the act aforesaid, and pending the suit of Brailsford, had directed the State's attorney-general to apply for a rule to the circuit court for the admission of the State as a party to defend its claim to the debt. The application was duly made, but refused. Whereupon the governor filed a bill of injunction in the Supreme Court, setting forth the foregoing facts, and charging a confederacy between the plaintiffs and defendant.

A majority of the justices, including Chief Justice Jay, maintained that Georgia had an adequate and complete remedy at law, and decided that the injunction should be dissolved and the bill dismissed, unless Georgia should bring her suit at law by the next term of the court. This she did, and an amicable issue was made up, as Iredell had suggested should be done in the equity cause, to ascertain whether Georgia or Brailsford was the owner of the debt. This issue was tried by a jury, being the first, and one of the very few cases, in which a jury was ever impaneled in the Supreme Court of the United States.

The charge to the jury, delivered by Chief Justice Jay, was the unanimous opinion of the court. They charged that the debts due Brailsford, a British subject, were not confiscated by the statutes of Georgia, but only sequestered, and that Brailsford's right to recover them revived at the peace; that sequestration did not divest property, and that Brailsford, during the war, was the real owner of the debt; that Georgia's legislative authority had merely prevented Brailsford from recovering his debts during the war, but that the restoration of peace, as well as the terms of the treaty revived the right of action, otherwise the sequestration would be a lawful impediment to the recovering of a bona fide debt in direct opposition to the fourth article of the treaty. The jury promptly returned a verdict for the defendants, and so Georgia lost her case, and with it fell all her confiscation statutes.<sup>22</sup>

Brailsford's case turned upon the construction of our treaty of 1783 with Great Britain, which Georgia's counsel contended, in that regard, provided only that as to subsisting debts "the remedy shall not be perplexed by installment laws, pine-barren laws, bull laws, paper money laws, etc." What these quaintly named laws were is a matter for the curious. They were like our "alleviating laws"—laws for prohibiting suits and staying *fi. fas.* against soldiers from 1812 to 1815, about which Wilde wrote a book and which acts Judge Berrien held void.<sup>8</sup>

#### CHISHOLM *v.* GEORGIA

The case of Chisholm, executor, *v.* the State of Georgia came on to be argued in the Supreme Court of the United States at the February term, 1793, the same term at which the motion to dissolve the injunction in the case of Georgia *v.* Brailsford was argued, the latter appearing to immediately follow the former on the docket. Georgia was represented in each by the same distinguished Philadelphia lawyers, Dallas and Ingersoll. But in the case of Chisholm, notwithstanding Georgia's opinion of the smartness of a Philadelphia lawyer, they were instructed simply to file a remonstrance and protest against the jurisdiction of the court, but to take no part in the argument of even this question. Chisholm was represented by Edmund Randolph, at that time the Attorney-General of the United States. Chisholm, executor, as had been his testator, was a citizen of South Carolina, and instituted his suit in the Supreme Court of the United States for the recovery of a debt which he claimed as executor against the State of Georgia. Copies of the writ and process were served early in July, 1792, by the marshal for the district of Georgia upon Telfair, the Governor, and upon Carnes, the Attorney-General of the State. At the August term, 1792, Georgia having ignored the suit, Mr. Randolph, as counsel for the plaintiff, made a motion, "That unless the State of Georgia, after reasonable previous notice of this motion, cause an appearance to be entered on behalf of the said State on the fourth

day of the next term, or shall then show cause to the contrary, judgment shall be entered against said State, and a writ of inquiry of damages shall be awarded." To avoid the appearance of precipitancy and to give the State time to deliberate, it was ordered by the court that the consideration of the motion should be postponed to the February term, 1793. On the motion of the Attorney-General, Chief Justice Jay delivered the opinion of the court. It was far the longest and most elaborate that fell from him while he presided as Chief Justice. Indeed, it was an able opinion, well argued and embodying those strong federal views which he had always entertained. Wilson, Cushing and Blair all wrote opinions coinciding with the Chief Justice. Iredell, the great North Carolina Justice, alone dissented. The court passed an order that the State should appear by the first day of the next term of the court, or show cause to the contrary, and in the event of failure to do so, judgment by default should be entered against her. Georgia still refusing to appear at the February term, judgment was rendered for Chisholm against the State and a writ of inquiry awarded. This writ, however, was not sued out and executed.\*\*

The Governor was notified of the rendition of the judgment against the State in February, 1793. The Legislature met in November. The Governor reported the proceedings in this cause and on the 21st day of November, 1793, the lower house passed an act in part as follows:

"And be it further enacted, That any Federal marshal, attempting to levy on the territory of this State, or on the treasury, by virtue of an execution by the authority of the Supreme Court of the United States, for the recovery of any claim against the said State of Georgia, shall be guilty of felony, and shall suffer death without benefit of clergy, by being hanged."

This bill was sent to the Senate, but there is no record that it was there adopted. Already the Eleventh Amendment was under consideration in Congress. It was sent to

the States on March 5, 1794. Georgia seems to have been then willing to mark time."<sup>7</sup>

This amendment was ratified by Georgia at the first session of the Legislature after its submission. The act of ratification stated, as might have been expected, that "this legislature doth entirely concur therewith, deeming the same to be the only just and true construction of the said judicial power by which the rights and dignity of the several States can be effectually secured."<sup>8</sup>

#### CLARK'S INDEPENDENT STATE

A separate and Independent Government was once set up within the borders of this State, against its authority; it was dominated by a citizen of this State who was its creator and who had given to the State valiant services.

This "Separate and Independent Government" was of sufficient consequence to attract the most serious attention of Washington, Jefferson, Hamilton, and other national leaders, and was finally destroyed by military power.

Citizen Edmund Genet arrived in Charleston on the 8th day of April, 1793. He came to us as the Minister Plenipotentiary of the French Republic, which had just been inaugurated. England and France were at war.

We must take a survey of the status of this country at that time. The western limits were at the Mississippi. That great stretch of unknown country which we came to call "The Louisiana Territory," was then owned by Spain. France was then very desirous of retaking it, the granting of which it had always protested. Spain was the owner of the Floridas. It contended that their northern limits were much further north than the limits which we now know, and under this contention it claimed a large part of South Georgia. That means not only what we now know as South Georgia, but a strip extending from the Atlantic westward to the Mississippi River. The United States were at that moment in negotiation with the Spanish Court for the free navigation of the Mississippi River.

The inhabitants along the border were ripe for revolution against this country or for warfare against the Spanish government, which stood in their way in their demands for free navigation of "The Father of Waters."

Elijah Clark had made an enviable reputation as an Indian fighter and had great success in a number of battles. He had added further to his glory by an assiduous and successful service in the Revolutionary War, and stood out at that time as the most prominent man of rough-and-ready battle in the southern part of this country. He was the father of John Clark, who was to become the leader of the Clark faction of Georgia politics, was to be made the Governor of the State, and was to exert a stormy influence in the politics of the State long after his expatriation and death, even down to the beginning of the Civil War. It is for Elijah Clark that Clark County is named, and a monument to him stands on the streets of Athens.

The relations of the United States with the Indians at that time were particularly unfortunate. The Creeks were greatly incensed over the treaty of New York. So, Genet comes upon the scene with the Indians in this state of contention, with the French in hatred against the Spaniards, the Spaniards in hatred against the French and us, a large part of our Western people ready to revolt against their own government, and part ready to wage war against any government that kept them from navigation of the Mississippi River. General Clark was especially incensed, because the treaty which he had negotiated at Galpinton was, in a large measure, set aside by the treaty of New York.

Genet employed Clark, and advanced to him the sum of \$10,000.00. Whether this was a salary or sum deposited with him for the purpose of meeting expenditures and the arming of men, is not made very clear, but he was certainly paid that sum of money, and proceeded to organize an expedition in favor of the French Republic against Spanish forces in North America.

Genet also procured the assistance of General George Rodgers Clark, who had done great service to the country in Western Virginia, and who was discontented at the treatment accorded him by the Government.

The record is not always clear as to which of these General Clarks is meant; they were not usually described by their initials by the Federal Government.

Genet's plans embraced an expedition to include those residing on the eastern bank of the Mississippi River, and also those living on its tributaries.

They were all to be mobilized at a rendezvous on the St. Mary's River in this State, and from thence were to attack the Floridas and Louisiana.

The first authoritative historical statement that we have of this is to be found in the correspondence laid before Congress by President Washington on the 20th day of May, 1794.

The United States at that time had its principal fort in the territory nearest the place which was to become General Clark's seat, at Fort Fidius, which was on the Oconee River, and, as nearly as can now be located, in Greene County.

On April 18, 1794, Constant Freeman, Agent for the War Department in Georgia, wrote the Secretary of War from Fort Fidius in part as follows:

"We have been for a long time held in suspense by the different reports which have circulated, relative to certain persons being employed in this State to recruit a corps of troops for the service of France. There cannot now be any doubts remaining on the subject. Officers have been appointed, and are now acting under the authority of the French Republic. Parties of recruits have already marched to the rendezvous appointed for them. Several men of this corps have crossed the Oconee and encamped opposite Greensborough. A small party was for some days opposite to the Rock Landing; they have since marched to Carr's Bluff, to join with those who had assembled at that place. The general rendezvous, we are told, is to be on the river St. Mary. An agent is appointed to furnish the supplies;

and he has for that purpose, received ten thousand dollars. A person, who was formerly contractor's clerk at this post, is employed by him to purchase four thousand rations of provisions."

This letter shows that some of the forces were already encamped across the Oconee and that General Clark would cross over in ten days to take the command.

On April 13, 1794, Major Gaither, commanding the Federal troops in Georgia, informed the Secretary of War that:

"The French are going on with an expedition against the Floridas from St. Mary's, and appear to have many friends in this undertaking among the inhabitants of this State. There is now at anchor, within musketshot of my fort, the sloop of war, 'Las Cassas,' about eighteen guns, with two hundred men, most of them French, and one company of them infantry. They are last from Charleston. They say there are thirteen sail, equally large and well-manned, yet to come from different ports in the United States. There is a recruiting post at Temple, eighteen miles up the river from thence. The last account was they have eighty men and expect three hundred from the upper part of this State."

Clark is reported to have been on the Georgia side of the St. Mary's River with a few men in April; their number is estimated from one hundred and fifty to three hundred. On May 14th, the Secretary of War makes representation to the Governor of Georgia that:

"General Clark and others have organized themselves into a military corps within the limits of the United States and are thence about setting out on some military expedition against the dominions of Spain, with whom we are at peace."

The Secretary of War called upon the Governor of this State to put down this illegal conduct. The Governor had been previously apprised that settlements were being made on the western banks of the Oconee by General Clark, and those under his command, but supposed that the expedition and the settlements which were being made across the Oconee

was by adventurers who had embarked in the French interest and in a short time they would of themselves disperse. On the 20th of May, Governor Mathews ordered General Irwin to direct the settlers immediately to remove. The Governor was left under the impression that his order had been obeyed, but on July 14th, he was informed that General Elijah Clark, formerly a Major-General in the Militia of the State, with a party of men, had encamped on the southwest side of the Oconee opposite to Fort Fidius. Ten days later General Irwin sent two officers to demand that he move. This demand General Clark positively refused to obey. The Governor then directed his arrest and proceeded to strengthen his military post. Thereupon, the Governor, on the 28th day of July, issued a proclamation reciting that he had "received official information that Elijah Clark, Esq., late a Major-General of the militia of this State, has gone over the Oconee River with intent to establish a separate and independent government on the lands allotted to the Indians, and induced numbers of good citizens of said State to join with him in the said unlawful enterprise", and "warning and forbidding the citizens of said State from engaging in such unlawful proceedings."

When this proclamation was issued, General Clark proceeded into Wilkes County, surrendered himself to certain Justices of the Peace who considered his case immediately, and entered an order of discharge.

Thereupon his cause becomes popular, and many persons flock to his standard.

On July 30, 1794, the Governor instructs Captain Fauche to recruit an extra troop of horse, and especially directs that

"You will be particularly vigilant in preventing provisions, or parties of men, from being thrown into the posts which have been established, without authority, by Elijah Clark Esq., on the southwest side of the Oconee," etc.

Governor Gilmer states that the Indians believed that General Clark was establishing this settlement in their territory on their account, and they were surprised that George

Washington did not support him. They believed that under the treaty of New York, the General Government would do in reference to these lands whatever they wanted.

General Clark established two forts west of the Oconee, one called "Fort Advance," the other "Fort Defiance," which was six miles from Fort Fidius. Houses were erected within these forts; a town was laid off at Fort Advance; General Clark was chosen Major-General; members were elected to a General Committee, called A Committee of Safety, "and everything had the appearance of a permanent settlement."

The State of Georgia continued, however, to pursue its purpose of causing this government to be put down. George Walton, one of the signers of the Declaration of Independence, who was then a judge of the Superior Court, having jurisdiction in Richmond and other counties, charged the grand juries in his circuit, calling attention to the proclamation of the Governor, wherein it was charged that "divers persons have gone over the temporary boundary line between the white and Indian inhabitants of this State with intent to establish a separate and independent government on the lands allotted to the Indians for their hunting grounds."

He called upon the grand juries to put down this unlawful conduct. This did not stop the organization of the new State. The Committee of Safety becomes its governing body and is governed by a Constitution. When we recollect that the governing body of the French Republic in "The Reign of Terror" was called "The Committee of Public Safety," we realize what an ascendancy the French influence had obtained over those who were engaged in this enterprise.

A "Board of Officers" was also elected, and E. Bradley was made president thereof.

General Clark addresses a letter to "The Committee of Safety" from Fort Advance, dated 5 September, 1794. He felicitates himself upon having met "with the unanimous voice of all the officers belonging to the different garrisons." He promises to "always endeavor to acquit myself worthy

of the command committed to my charge." He shows that he knows that the artillery at Augusta have been ordered to be in readiness to march against him, and that one-third of the militia are directed to be draughted. He does not believe that the troops will fight against him; he states that the troops of Richmond and Burke counties have refused to march against him; and believes that the people are with him. He states that he is "determinedly fixed to risk everything with my life, upon the issue, and for the success of the enterprise." He tells his men that if they are summoned to surrender the garrison, they "must refuse with a firmness ever accompanying the brave."

He also records the time of meeting of the "Board of Safety" as being 5th of October, that is, the first Monday of the month, saying:

"That is the day on which our Constitution requires them to meet."

He also states:

"It is entirely out of my power to appoint the 22nd of this month, or any other day, if it does not agree with the Constitution."

No trace of the contents of the Constitution can be found; but there thus existed every element of an organized state or government; a legislative body, a fundamental compact, an organization of officers. Of course, there was a militia established, for the whole thing was born in military establishment. A town was laid off, houses built, and two forts erected. These all had the appearance of a permanent settlement.

General Clark misinterpreted, however, the temper of the people. Generals Twiggs and Irwin went to him and sought to have him remove, but he declined. Major Adams was ordered by General Twiggs to cross the Oconee and endeavor, by persuasion, to remove the settlers from Fort Defiance. Major Adams' life was threatened. Thereupon Major Adams was ordered to proceed to Augusta and make a request upon the Governor for orders to dispossess the

persons at Fort Defiance. On the 26th day of September, General Irwin encamped on the banks of the Oconee opposite Fort Defiance. Colonels Merton and Lamar, Major Adams, and other officers of the militia crossed the Oconee the same day to cut off communications on the south side of the river, and negotiations were then had with General Clark, and it was promised if he would evacuate the posts, he and his men would be protected in their business and property.

The day following the forts were abandoned, and were set upon fire and destroyed, and thus, on the 28th day of September, 1794, was ended the existence of the Separate and Independent State within the borders of the State of Georgia.

Alexander Hamilton assured the Governor of Georgia of the pleasure the President had in knowing the steps which were being taken to put down this new settlement, and spoke of it as being essentially hostile to our republican form of government, in that it was proceeding upon the idea of a separate and independent government to be erected upon a military basis.

The motives which prompted General Clark in his first efforts were, no doubt, his desire to make war upon the Indians, and upon the Spanish, and to co-operate with the French and to earn the promised or expected rewards to be given by the French Government for the service. Georgians in general of that day disliked the Indians, had been at war with the Spaniards, were in dread of further war with them, and were friendly with the French.

That the public first were in favor of General Clark, is probably true, and that opinion is possibly reflected in the opinion of the Justices. But when they grew to realize that the settlement meant a "Separate and Independant Government" and that the sovereign power of both the State and Federal Governments was opposed, this opinion changed, the militia did march against the adventurers, and recruits ceased to come to them.<sup>25</sup>

## THE CONSTITUTION OF 1795

On May 16, 1795, the convention (provided for in the Constitution of 1789) assembled at Louisville and adopted a number of amendments to the constitution.<sup>29</sup>

The amendments, or as they are sometimes called, the Constitution of 1795, made very few changes in the organic law. It did not change the organization of the Legislature as composed of two bodies, a Senate and House. It continued the division of the General Assembly and required annual elections of Senators and Representatives and annual sessions of the Legislature.

One change was in the mode of electing the Governor. This was an election by the General Assembly, the two bodies meeting together. His powers, as fixed by the Constitution of 1789 were not changed.

No change was made in the judicial department.<sup>30</sup>

## THE YAZOO FRAUD

On January 7th, 1795, the Legislature of Georgia authorized the Governor to sell certain portions of its vacant lands to four companies, calling themselves "The Georgia Company," "The Georgia Mississippi Company," "The Upper Mississippi Company," and "The Tennessee Company." Under that act, the Governor granted to James Gunn, Mathew McCallister, George Walker, William Longstreet, Wade Hampton, and others, "The Georgia Company," certain of those lands for \$50,000 cash and \$200,000 to be paid November 1st, 1795, secured by mortgages on the lands.<sup>31</sup>

Letters patent under the great seal of the State and signature of Geo. Matthews, governor, were issued on the 13th day of January, 1795. This wanton dissipation of the property of the State, believed to be the result of corruption, aroused the people to fever heat. James Jackson, a name ever dear to Georgia, then a United States senator from the State, afterwards one of her governors, immediately resigned his seat in the Senate, and returning to the State

announced himself a candidate for the Legislature. He canvassed the State. A convention was called which sat in May, 1795. Petitions and remonstrances on the part of the people and presentments of grand juries were laid before it. The convention, Resolved, "that from the number, respectability and grounds of complaint stated in the petitions, that the subject required legislative deliberation, and ordered the petitions to be preserved by the secretary, and laid before the next legislature." The legislature thought this action on the part of the convention invested them with conventional powers, *quo ad hoc*, and gave additional validity to their legislative authority, if their powers over the act of a preceding legislature should be questioned. They proceeded to pass an act denouncing the act of sale as an usurpation of power, unconstitutional and rotten with corruption. They declared that the evidence showed that a majority of the members of the lower house were interested in the purchase; and in the senate, where the act was passed with one majority, they alleged that more than one member had been proven corrupt, and that one overwhelming evidence of corruption was its accepting \$500,000 as the consideration of the sale, when the sum of \$800,000, offered by persons of as large capital, of as much respectability, and on terms more advantageous to the State, was refused. They therefore declared said "usurped act" null and void. The grants were annulled and declared void, and the territory declared still the sole property of the State. They further enacted, "That within three days after the passage of the act, the different branches of the legislature shall assemble together, at which meeting the officers should attend with the records and deeds in the secretary's, surveyor-general's and other public offices, and which records and documents shall be then and there expunged from the face and indexes of the books of record of the State, and the enrolled law shall then be publicly burned, in order that no trace of so unconstitutional, vile and fraudulent a transaction, other than the infamy attached to it by this law, shall remain in the public offices thereof."

It was further enacted that the county officers of records should produce their books to the Superior Courts at the next session after the passage of the law, and the courts were directed to cause their clerks to obliterate the deeds conveying any portion of said territory therefrom, in their presence, and, in the event of the failure or refusal of the clerks to do so, they were to be ousted from their offices and disqualified from holding any office in the future. And if thereafter said officers should enter upon their records any transaction, conveyance, grant or contract relative to a purchase under said usurped act, they were to be rendered incapable of holding any office of trust, and be subject to a penalty of a thousand dollars. They further enacted that said usurped law should not, nor any grant or deed issued by virtue of it, be received as evidence in any court of law or equity in the State, to establish a right to said territory or any part thereof, but might be used for the recovery of any moneys paid or given as the consideration for the pretended sales of the original pretended purchasers or persons claiming under them. And the Governor was authorized to refund the moneys to the persons who had deposited in payment of the pretended purchased territory. A certain mortgage book in which were recorded certain mortgages given by some purchasers of portions of the territory, having by the indisposition, mistake or neglect of the Secretary of State not been produced at the former *auto da fe*, a supplementary act was passed the following year, assembling the two houses of the legislature, requiring this mortgage book brought before them and that certain pages from said book, containing the entries of certain pretended mortgages, "be carefully expunged from said book, and at or about the hour of 12 o'clock be burnt that no trace of so infamous a transaction should remain in the public offices of the state." Thus this "usurped act," as our fathers called it, and those records of conveyances under it were consumed, and contemporary history informs us that they were burnt by fire drawn from heaven, the Governor using a sun-glass for the purpose.<sup>20</sup>

The "Georgia Claim," as it was called, came up for decision by the Supreme Court in the great case of *Fletcher v. Peck* (6 Cranch, 37.) It went up from the Circuit Court of the District of Massachusetts. The decision, covering nineteen printed pages, gives a minute history of Georgia's charters and boundaries, her cession to the United States of land, her compact of 1802, etc. (Ib. 95 to 114.)

Peck had bought part of those lands of the Georgia Company from Fletcher, who held by a succession of deeds dated September 23, 1795, February 27, 1796, and December 8, 1800. Fletcher has covenanted in his deed that Georgia had title and seizin, that said authority to sell was good, and that said title so conveyed to Peck had been "in no way constitutionally or legally impaired by virtue of any subsequent act of any subsequent legislature of the said State of Georgia." The case was argued by Martin for Fletcher, and by John Quincy Adams and R. G. Harper for Peck,—mainly as to the pleadings. A year later, after adjusting the pleadings, it was again argued, on its merits, that time Mr. Joseph Story taking the place of Harper, this being the only case which Mr. Story argued before that court whose bench as an Associate Justice he so long adorned. The Supreme Court affirmed the decision below. It held that, in 1795, Georgia had the right to dispose of the unappropriated lands within its limits, and that said first act was sufficient authority for the grant; that in a case between two individuals over a claim under a statute in due form of law, a court of law could not inquire into the question of corruption of the lawmakers, nor decide it void because of corrupt motives of those passing the same; that rights vested under a statute could not be divested by a repeal of that statute; that a sovereign State cannot pronounce its own deed invalid; and that a grant is a contract. It was there by Marshall said that States of this Union were forbidden by the United States Constitution from impairing the obligation of contracts, and that all attempts to do so were void, because of the prohibition of the Constitution or general principles of right.

The case is familiar to all lawyers. It *first* declared that Georgia was not a "single, sovereign power," but "a part of a large empire. She is a member of the American Union," and bound by the limitations of the Constitution of the United States (Ib. 136.)

This case has been cited oftener and on more subjects than any other decided by that high tribunal. The Supreme Court of the United States has adjudged about seventy-five cases on that question as to contracts, of which Georgia furnished about one-tenth. The case of *Dartmouth College v. Woodward*, (4 Whaton, 519-715,) decided in 1819, is generally quoted as the leading case in this country as to the nullity of State statutes impairing the obligation of contracts, because the learned, classical and brilliant arguments of Webster for the college and Wirt for the statute cast such an halo of glory over the subject. But the decision had already been practically made in *Fletcher v. Peck*, by Marshall C. J., who elaborated it in this New Hampshire case. (4 Wheaton, 656.)

But the case of *Fletcher v. Peck* involved far more than this contest over so small a body of lands. In February, 1796, Washington, by special message to Congress, spoke of the great grant called the "Yazoo Fraud" as of "exceeding magnitude, that might in its consequences affect the peace and welfare of the United States." In 1789, lands granted by Georgia under an act of that date covered more than fifteen millions of acres on the Tombigbee, Tennessee and Mississippi Rivers, and their tributaries, occupied by powerful tribes of Indians (Creeks, Cherokees, Choctaws and Chickasaws), with whom and with Spain, claiming parts of the lands, the United States might become involved in war on account of what might follow under that grant. Washington, as President of the United States, stopped occupancy of the lands by proclamation. The lands not being salable, so circumstanced, were of little value to the purchasers. They tendered the paper currency of Georgia for the balance of the purchase money, and upon its being

refused, they sued the State in the Supreme Court of the United States to enforce their rights.

In *Howard v. Ingersoll*, (13 Howard, 409,) is mentioned the case of Moultrie, *et al.*, *v.* The State of Georgia, not reported, growing out of that act passed in 1789, conveying lands between the Mississippi and Tombigbee Rivers to the Virginia, South Carolina and Tennessee Yazoo companies. Those curious to see the case will find it as an exhibit to a petition of Moultrie and others to the Congress of the United States for indemnity because Georgia refused to make titles to the land claimed. It was a bill for specific performance. The conveyance called for five millions of acres, more or less. The survey showed in the named boundaries over ten millions of acres. The conveyance called for the payment of \$66,964 in two years. The purchasers tendered Hillhouse's and Wereat's certificates, which were refused by Georgia's treasurer. Petitioners said that when the act was passed it was stated by members of the committees and others that "Rattlesnake money," which was worthless, was not to be paid, and that therefore no other Georgia paper ought to be refused, because *mentio unius est exclusio alterius*." (Those curious to read the details of those suits are referred to vol. 1, State Papers, Public Lands,—in the library of the University of Georgia.) The Moultrie case was never tried. Why?

That "Yazoo sale," was a small affair compared to the "Yazoo Fraud," under which the Fletcher and Peck's case arose. Under that "Yazoo Fraud," for \$500,000, one-fifth was to be cash and the remainder secured by mortgages on the lands granted. The Georgia Company was to pay \$250,000, the Georgia Mississippi Company \$155,000, the Upper Mississippi Company \$35,000, and the Tennessee Company \$50,000, and take the lands proportionately meted and bounded, making perhaps three times as many acres as were covered by the "Yazoo sale" of 1789. You know how high the political excitement ran, how every man who voted for the bill, however good was his character before, was denounced as a bribed scoundrel and ostracized.

You have often heard that our United States Senator Gunn (Senator in 1780-1790 and 1791-1801, re-elected just before the Yazoo act) was a ringleader in the affair. Albert Gallatin, one of Georgia's commissioners, said, and you have read it in Gilmer's Georgians, that every man who voted for it was bribed save one, which statement Col. Chappell's Reminiscences repeats, saying that that one was Robert Watkins.

The plea in *Fletcher v. Peck* on that point was, that members favoring the act "were to have a share of and be interested in all the lands which they, the said Gunn, McCallister and Walker and their associates, should purchase of said State by virtue of and under authority of the same law, and that divers of said members" voted therefor by and under that corrupt influence.

Even if *Fletcher v. Peck* was "a feigned case," as Johnson, J. said, in his separate opinion, he suspected, it seems strange that the corruption was not charged more broadly, if the facts were in that regard as Gallatin, Gilmer and Chappell wrote.

But surely James Jackson, who drew, and the legislature which passed the "rescinding act," stated the case as strongly as they felt that facts would justify, in the preamble to the rescinding act, which undertook to give page after page of reasons justifying its passage.

That preamble (already quoted in substance) shows how much of politics was there in the "grandstand-play" of the rescinding act. Had the purchasers of the "Yazoo sale" of 1789 paid for their fifteen millions of acres in cash, Georgia would have been happy. But for the credit amount they tendered at par our paper currency. Our act of 1783, February 11 (Marbury & Crawford's Digest, 185 *et seq.*), throws light on this matter. It fixed the value at which paper currency was to be taken in settling private contracts, instead of leaving a jury to decide each case on its "equities," as we did as to Confederate contracts. It fixed the values of Georgia paper for each day from January 1, 1777 to June 1, 1780, beginning with one hundred to one and ending with

sixteen thousand two hundred and twenty-nine to one; and the values of Continental currency were fixed for every day from January 1, 1779, when the value was seven hundred and ninety-eight to one, and ending June 1, 1780, when it was eight thousand one hundred and forty-four to one.

Besides, much of the land covered by the Yazoo fraud was claimed by Spain, and by the United States, and all of it was a waste howling wilderness, occupied by Indians, who, we admitted, had the right of occupancy at least until the United States and Georgia should devise and execute a plan for their removal, and it was all important to have these lands occupied by citizens to come from elsewhere.

We may well doubt whether, had the bid of \$500,000 been rejected, and that of \$800,000 been accepted and paid, we would have ever heard of "the Yazoo fraud." We may speculate whether it had not been better for Georgia to have large bodies of these lands colonized as was the Virginia reservation along Broad River, etc., than to cut them up into small parcels as required by our new Constitution of 1798 and subsequent legislation.

The decision in *Fletcher v. Peck* hurt the United States more than Georgia, by improving the market value of lands which the United States had agreed to free so that they might be owned and occupied by white citizens of Georgia. By act of March 31, 1814, Congress provided for scrip to pay "the Georgia claimants."

We are in the habit of bragging that Georgia gave two States to the Union. The truth is, we reluctantly and after long delay ceded the territory making almost all of Alabama and Mississippi, for a large and valuable consideration. We got in return the strip twelve miles wide along our whole northern border, and \$1,250,000 out of the first proceeds of sales of our cession. The United States set apart a half million of acres to pay claims against the lands, agreed to extinguish the Indian title to other parts of the lands, paid \$3,000,000 to settle the "Yazoo claims," and over \$6,000,000 for "Yazoo scrip." Jefferson had

before the decision of *Fletcher v. Peck* offered \$5,000,000 in settlement, and paid no more than that sum plus interest after that decision.

When, in 1824, the United States was trying to adjust accounts with Georgia, they claimed \$7,735,243 to have been paid out on account of "Yazoo claims," etc. In reply, Governor Troup, in his message of that year, stated that the payments on account of "Yazoo claims" were but \$4,284-151, and that Georgia ceded to the United States eighty million acres of land, worth \$1.25 per acre at a low valuation, and that, therefore, we should charge for that land in settlement \$92,264,757. And he then proceeded to tell the legislature of the hostility of the Union to our State, to warn them of the danger of "consolidation" and the like, and closed his message with the hope for the States that "no baleful comet may, in its irregular course, strike one of them from its place, and, deranging the system, bring back chaos and confusion."<sup>5</sup>

#### THE PINE-BARREN SPECULATIONS

It had become evident by the year 1794 that the head-right system was not working as it should. By an Act of that year, upon complaint made, the Governor was authorized to suspend any survey, and after advertising for sixty days, hear evidence of its propriety, and also to inquire into and annul surveys already made. A practice, too, of transferring warrants and having the same re-issued to the transferee by the land court, seems to have sprung up, for the same Act prohibits the surveyors from surveying under any warrant unless the holder would swear the same was issued on his own head-rights or bounties; and the warrant must have issued since 10th of December, 1789.

The several head-right Acts hereinafter recited, it will be noticed, were designed to divide the land among those who should prove settlers, and not to sell them in immense tracts. Each Act limited the amount to be obtained on the head-rights of any one family to one thousand acres. Various requirements of settlement thereon, and improvement

thereof, were made. And yet these laws were all set at naught and thousands of acres found their way into the hands of single individuals. It is thought to be true that unscrupulous persons obtained these head-right warrants, and finding a market, sold them, before survey, to persons who thus acquired large tracts.

It is evident from the prohibition in the Act of 1794, that the land courts would re-issue new warrants in lieu of the old, to the purchaser in his own name. In this way much land would be granted to one name. Doubtless unscrupulous speculators procured these warrants to be issued to their creatures and transferred to themselves, in many instances, and it is doubtless true that a construction was put on the law in some cases, whereby hundreds of grants (speaking advisedly) of one thousand acres each were issued to the same person on the same day. The activity of the land office increased greatly, so much so that in the term of Governor Matthews, in 1794-'95, over twenty volumes of more than nine hundred grants per volume were registered by the Secretary of State. In some of these upwards of two hundred consecutive pages will contain grants to one individual. The books of the surveyor-general are also full of curious matter. In four books, containing between three and four thousand surveys, each of one thousand acres, one entire book, and part of another, contained the lands surveyed to one man, aggregating to one million two hundred and five thousand acres. Seventeen other names embrace the rest of these books. These grants vary from four hundred and seventy thousand acres, down. Many of the surveys are made by the grantee, or surveyor. Very few persons, other than one of the eighteen grantees, acted as surveyor. They exchanged compliments. By a report of the surveyor-general made in 1839, it can be seen that the amount of land granted in these head-right counties far exceeded the land actually within them. It is doubtless true that duplicate grants exist to much of this land.

A partial explanation to this state of affairs is to be found in the unsettled condition of the country and official

carelessness; a further explanation can be found in the rise and progress of the "pine barren speculations" of 1794-'95, which excited much indignation at the time; but into which no full inquiry was ever made.

By the Act of 1793 the lower part of Washington county had been cut off and formed into Montgomery. It, with a large part of Washington, was composed of barren lands covered only by dense pine forests. Here it was that this great fraud was perpetrated. The story is briefly this: In the year 1794, following the creation of Montgomery county, a band of unprincipled speculators combined to debauch the county officials to secure enormous grants of land to which they were not entitled; to have lands granted even beyond the quantities in the several counties; to have their land marks so described as to indicate rich soil; and to go into the far distant States and sell to unsuspecting purchasers.

The Hon. Absalom Chappell, in his "Miscellanies of Georgia," thus describes the working of this scheme of fraud:

"The plans of the miscreants were well laid and unflinchingly followed out. In the vast uninhabitable woods they planted or found at wide distances, the necessary accomplices and tools. First, men who were to act as magistrates and form one of those peculiar legal devices of that day called Land Courts; of which the function was to issue or rather to profess to issue the land warrants which were the initial step under the head-right system. Next, other men were planted or found, who as county surveyors were to make, or rather to profess to make, and return the locations and surveys contemplated by these warrants. And the pains were also taken to have all these official accomplices regularly elected and commissioned to the offices they were intended to abuse; their election to which was a thing not difficult to effect among the ignorant unsuspecting settlers scattered thinly over the immense wilderness, and it was this obvious facility of electing men

that could be used as tools, that undoubtedly stimulated and encouraged, if it did not originally suggest, the idea of the great pine barren speculation; the whole machinery of which stood on these basely designed elections. Here, too, moreover we see the reason why this fraud followed so quickly after the formation of Montgomery county, and had not been attempted or even conceived sooner. For as long as the territory remained a part of Washington county, the voters entitled to a voice in these elections, were altogether too numerous, intelligent and vigilant, to have permitted any hope of success in such a conspiracy.

"Not satisfied with seizing two or three millions of acres which existed, they trebled the number and went to the extent of issuing from the surveyor-general's office, land forgeries to the extent of six or seven millions of acres.

"Some genuine grants for good lands were artfully mingled with all of these grants and the character of soil in the pine barrens held up as fertile by describing the corners of the grant in hickory, dogwood, walnut, etc."

These grants were then carried North and reports of the rich new lands of Georgia, and the new lands on the Oconee River, which had reached there, enabled these swindlers, in many instances, to sell the lands called for by their grants. It is said that many a person would come to Georgia in expectation of settling the rich grant of land he had bought, only to learn that it was impossible to find it or its boundaries, and to see only the unbroken pine forest around him.

The utter insufficiency of the head-right system had by this time been demonstrated, and it had become evident that a new method would, of necessity, be adopted in the distribution of the new lands which the treaties with the Indians were bringing within the gift of the State. The old counties of the State were so cut up by grants heretofore made, that in them it was not deemed advisable to attempt a new system. But in the new territory acquired by the treaty of Fort Wilkinson in 1802, and in the lands subsequently

acquired from the Indians throughout the balance of the State, the Lottery System was adopted. The method, as tried the first time with the cession of 1802, was continued with but few alterations until the territory of Georgia had been distributed.<sup>4</sup>

#### THE CONSTITUTION OF 1798.

Among the amendments adopted by the convention of 1795 was an article declaring that at the general election in 1797 delegates should be chosen to assemble in convention at Louisville on the second Tuesday in May, 1798, to consider further alterations and amendments. The convention thus provided for assembled at the time and place fixed, and on May 13, 1798, adopted and declared of force the constitution known as the Constitution of 1798.<sup>17</sup>

The country was at peace, the people were looking to the future. The wisest and best of the two previous Constitutions was retained. The same form of government was preserved, with the same limitations. But much had been learned from experience. The powers of the government were more specifically defined, and the rights of the people were more securely safeguarded against the government.

The separation of the departments of the government was stated with even greater emphasis.<sup>18</sup>

This Constitution remained in force, except as altered by amendments adopted by the General Assembly, until 1861. It contained no separate article known as a "bill of rights," but in it we first find these fundamental principles:

"No holder of public money shall be eligible to office. No debtor, where there is not a strong presumption of fraud, shall be detained in prison after delivering up his real and personal estate for the benefit of his creditors. No slave shall be maliciously dismembered or deprived of life."

The organization, composition, election and sessions of the General Assembly provided by the Constitution of 1795 were adopted by the convention of 1798, and remained

of force until changed by a special amendment of that Constitution in 1840, when the sessions of the Legislature became biennial.<sup>18</sup>

Senators and Representatives were required to be solvent; they could not be the holders of public money unaccounted for; nor defaulters as to taxes or other government contributions.<sup>19</sup>

The Constitution fixed the qualifications of a Senator as not under twenty-five years of age and nine years citizenship in the United States, and three years an inhabitant of the State, with the further condition that he "is and shall have been possessed, in his own right of five hundred dollars, or taxable property to the amount of one thousand dollars, within the county, for one year preceding his election, and whose estate shall on a reasonable valuation, be fully competent to the discharge of his just debts over and above that sum." The qualifications of a Representative were the same save that the age limit was reduced to twenty-one years, citizenship in the United States to seven years, and the value of the freehold estate necessary to own to two hundred and fifty dollars or other taxable property to the value of five hundred dollars.<sup>20</sup>

The property qualification was removed by amendments of 1834 and 1835. They were free from arrest during the sittings of the Assembly, and ten days immediately before and after, except for felony, treason, or breach of the peace; and were required to take the following oath:

"That I have not obtained my election by bribery, threats, canvassing, or other undue or unlawful means used by myself or others by my desire or approbation for that purpose."<sup>21</sup>

This Constitution reads: "Every person shall be disqualified from serving as a Senator or Representative for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat, or canvassed for such election; and every candidate employing like means and not elected, shall on conviction, be ineligible

to hold a seat in either house, or to hold any office of honor or profit for the term of one year, and to such other disabilities and penalties as may be prescribed by law."

It is probable that these unusual and rigorous qualifications were due to the disclosures of the Yazoo Fraud. Many and serious were the charges of corruption, debauchery and bribery of members of the General Assembly in order to secure the passage of that objectionable Act. A Justice of the Supreme Court of the United States (Mr. Justice Wilson, who had rendered the country great service in the Constitutional Convention and who had gained wonderful fame as a lawyer of splendid power. His was the master mind which accomplished the passage of the Acts under which the Frauds were consummated.<sup>17</sup>), a District Judge of the United States and a United States Senator of Georgia were alleged to be implicated in the bribery of the Legislature, and it would seem that when the Constitution of 1798 was written, the people, profiting by their experience in this matter, thought they could insure themselves against a repetition of this fraud by these qualifications for membership in the General Assembly.<sup>18</sup>

The Governor was to be elected by the General Assembly; and, until the amendment of 1845-'47, he must have possessed, over and above just debts, five hundred acres of land, in his own right, within the State, and other property to the amount of five thousand dollars.<sup>19</sup>

The Executive Department was enlarged in 1798 by the creation of two new offices, those of the Treasurer and Surveyor-General.<sup>20</sup>

Originally, practically all the officers were elected or appointed by the General Assembly. From time to time amendments were adopted, providing for election by the people.

The plan of appointment, however, remained as to the Secretary of State, the Treasurer and Surveyor-General.

Official purity was assured by making all persons convicted of felony ineligible to any office or appointment of honor, profit or trust, within the State.<sup>21</sup>

The judicial powers were vested in a Superior Court and such inferior judicatures as the Legislature should establish.<sup>20</sup>

No higher court was authorized by any constitution of the State prior to 1843. The power to establish a court of review, with authority to set aside verdicts, was, no doubt, purposely withheld as inconsistent with that principle of government, then regarded as fundamental, that all power and authority resided in the people, and especially with the Anglo-Saxon conception of that principle, that the people were alike the source of authority and of justice. With that principle both the Legislative and the Judicial departments of the government were made to conform. Legislators and judges were alike given short terms and other limitations equally significant were prescribed. Every juror was made the judge of the law as well as of the facts of every case submitted to him, and the verdict of the jury was deemed to be the ultimate expression of justice. Upon the juries, therefore, was placed the responsibility for the protection of society and for the administration of justice. The seat of power was not on the Bench, but in the jury box. The fear of a concentration of power in a few officials was sufficiently strong to prevent a disregard of any of the limitations imposed upon the judicial systems, authorized by the Constitutions of 1777, 1789 and 1798. But gradually that fear subsided. The good behavior of the Judges, their considerate demeanor and wise discretion in the exercise of their limited functions evinced a purpose on their part to conform themselves and their administrations to popular ideals. Such was the condition when the bill to amend the Constitution, so as to authorize the establishment of a Supreme Court, was passed by the Legislatures of 1842 and 1843. By that amendment there was imbedded into the Constitution of 1798 the foundation of a temple, destined to become the chiefest glory of the State.<sup>21</sup>

The Superior Court was given exclusive jurisdiction in criminal cases, and in cases involving title to land, and was empowered to correct the errors of inferior judica-

tures. The Inferior Court was given jurisdiction in all other civil cases, but the Legislature was authorized to confer concurrent jurisdiction on the Superior Court.

The powers of a Court of Ordinary, or register of probate were vested in the Inferior Court, its decision being subject to the right of an appeal to the Superior Court.<sup>20</sup>

The Justices of the Peace were given "power to try all cases of a civil nature within their district where the debt or demand does not exceed thirty dollars."<sup>21</sup>

The Judges of the Superior Court were elected by the General Assembly for a term of three years. The Justices of the Inferior Court were elected by the General Assembly to hold during good behavior. The Justices of the Peace were appointed by the Justices of the Inferior Court of the county, two for each district, to hold during good behavior.

The Judges of the Superior Court and the Justices of the Inferior Court were removable by impeachment, or on the address of two-thirds of the General Assembly.

Justices of the Peace were removable by conviction for malpractice, felony, or infamous crime, or on the address of two-thirds of the General Assembly. (Watkins' Digest, pp. 39-40).<sup>22</sup>

This provision for the "recall of Judges" was carried forward into the amendment of 1834; was retained in the Constitutions of 1861, 1865, and 1868.<sup>23</sup>

In the Constitutions of 1789 and 1798, no limitations were laid upon legislative authority, either as to the raising or appropriation of the revenues.<sup>24</sup>

Our first legislature exercised the privilege of granting divorces on such grounds as they saw fit, having taken this over from Parliament. In 1798 the Constitution provided that divorces could not be granted by the legislature except upon two-thirds vote and after a jury in the Superior Court had authorized a divorce upon "legal principles." This prevailed until the amendment to the Constitution of 1835,

which provided that a divorce could be had by the concurrent verdicts of two juries, finding a divorce upon "legal principles."

Our Supreme Court first defined "legal principles" in 1846 holding that the Canon Law of England, as a part of the Common Law, was adopted by our Statute of 1784, and prescribed the grounds of divorce,—that total divorce could be granted only for adultery and cruel treatment.<sup>25</sup>

"It is an ill wind that blows nobody good," and so with all the charges against the celebrated Yazoo Act, it was the occasion of Georgia's devising a novel and radical restraint upon legislation, one which has made the courts more potent in arresting and setting aside laws than anything in the history of legislation, unless it be the decision in the Dartmouth College case; with this difference, however, that decision, whether it made for good or for evil, has largely spent its force, but this provision of the Constitution of 1798, with its twin principle of requiring singleness of subject-matter copied into most of the new Constitutions promises to make the courts yet more powerful in the future. Prior to the time of this constitutional requirement, Parliament and legislative bodies adopted their own methods of passing laws. The title was no more a part of an Act than the title of a volume is a part of the book. The Constitution of 1798 created a new rule and provided that "no law or ordinance shall pass containing any matter different from what is expressed in the title thereof." "The tradition being that it was inserted in the Constitution at the instance of Gen. James Jackson; its necessity being caused by the Yazoo Act, which is alleged to have been smuggled through the Legislature under the caption of 'An Act for the payment of the late State troops'," (4 Ga. 38.)

This is believed to be the first Constitution in which any such provision is to be found. The Constitution of the United States and the older Constitutions of the thirteen original Colonies contain no such restriction, although nearly all of the more recent Constitutions of the old as

well as the new States have the same or analogous provisions.<sup>9</sup>

Mr. McElreath in his recent admirable work on the Constitution of Georgia, says:

"It is an interesting fact that the Constitution of 1798 is the only constitution ever adopted by the people of Georgia at a time when there was not a virtual revolution of the government itself. The Constitution of 1777 was adopted in consequence of the casting off of the State's allegiance to Great Britain and of the necessity of setting up an independent government; that of 1789, on account of the abandonment of the Articles of Confederation, and the adoption of the Federal Constitution; that of 1861, on account of the secession of the State from the Federal Union; that of 1865, on account of the fall of the Confederacy, and the necessity of obtaining re-admission into the Union; that of 1868, on account of the refusal of the Federal Government to re-admit the State under the Constitution 1865, making the adoption of another Constitution a condition precedent; that of 1877, when the people of Georgia resumed control of their own affairs after the end of the reconstruction era. The Constitution of 1798, and the present Constitution are the only ones which represent a settled condition of the State's organic law; the others represent temporary conditions and transitional periods." (McElreath on the Constitution of Georgia, p. 114, Sec. 87.)<sup>10</sup>

The Constitution was to be amended only by two-thirds vote of each House at two consecutive sessions of the Assembly.

During its life of 63 years, it was amended 22 times, but while it was democratized by removing property qualification from representatives, and by the election of officers by the ballot of the people, there was, with the exception of the creation of the Supreme Court, no radical change in the spirit and form of the government and the limitations on its powers. How long this great instrument, but for the secession, would have survived, is beyond the ken of statesmen. Certain it is that in 1861 it showed no evidence of weakness or decay.<sup>11</sup>

## THE LAWS COMPILED AND PUBLISHED

In March, 1773, a petition from the inhabitants of Augusta was presented that all the laws the Legislature may think conducive to good government may be compiled and printed in one Code. (15 C. R. 421). Nathaniel Pendleton, in 1776, was elected Commissioner to codify the laws, but either because he declined to undertake the work or for other reasons, the statutes were not published, and several times the Grand Jury of Richmond County called attention to the serious consequences resulting from the failure to print the laws;—

“We present as a Grievance that the Justices have not been furnished with such Acts of Assembly as are now in force as well those passed before the Revolution or since, and recommend that a number of copies may be bound together and lodged at the Printing Office ‘For Sale’ that the citizen may at least by purchase have it in his power to know of the penal laws of this State.” (Minutes 1783, 96, 46, 134, 202).°

In 1786 an Ordinance was adopted “to appoint some person therein named to digest and arrange all the laws passed in this State before or since the Revolution,” but nothing was done under its provisions, and Georgia still remained without any accessible or printed records of its Statutes. It had existed for sixty-seven years; many laws had been passed, some had been lost, and from what is said in Watkins’ Preface we may infer that the failure to publish was caused by some unknown but selfish interest. For it is there quaintly stated that the compilers “had determined, though, strange to relate, not without opposition, to encounter the task of compiling the whole of the State’s laws into one view \* \* \* \* upon the credit of their own fortunes, and hazard its success upon their individual reputations \* \* \* \* Many laws have never been published; some are entirely lost or destroyed; others are in a tattered and mutilated condition, and the mass from

which this collection is made has hitherto been as much out of the reach of the public use as the laws of Caligula.”\*

Robert Watkins took a prominent part in the public affairs about this time (28 Ga. 338), and may have been the draftsman of that clause of the Constitution (1798) which provided that “within five years \* \* \* \* the body of our laws, civil and criminal, shall be digested and arranged under proper heads, promulgated in such manner as the Legislature may direct.” At any rate, it is evident from the commendation of Geo. Walton and others, dated November 15th, 1798, that Watkins’ Digest was in preparation before the adoption of this provision of the Constitution. The Assembly of 1799, when the Digest was actually in press, (note to preface to Watkins’ Digest) passed a Resolution “that from a conviction that the Digest is a work of great labor, and must and will be of importance in forming a complete Digest agreeable to the 8th Section of the Constitution, \* \* \* \* George and Robert Watkins are entitled to generous retribution for their labor and exertion \* \* \* \* and that the sum of \$1,500 be appropriated accordingly.”

But because the Digest contained the Yazoo Act, Gov. Jackson disapproved the appropriation. Watkins insisted that other Acts, which were repealed, were also published in full, and he had, in the same way, inserted the Yazoo Act with the Act repealing it. The Governor replied that the rescinding Act had declared that the Yazoo Act never had been law. It, therefore, needed no repeal and consequently had never been entitled to a place in the Digest.

It has not often, if it ever before, happened that a law book caused the shedding of blood, but the correspondence and feeling between the author and the Governor became so acrimonious that it resulted in an old-time, dignified, courteous and bloody duel “which was conducted in the highest style of punctilio.” While the seconds were arranging the terms of the combat, the principals conversed with great elegance and entire politeness on different matters.” Then

the seconds notified the combatants of the terms agreed on. "You are to stand at a distance of ten paces; you are to fire at the words 'make ready, fire!' A snap or flash to be counted as a shot, etc., etc." At the first fire both pistols went off into the ground. The second was a blank. At the third Gov. Jackson fell, shot *secundem artem*, in the right hip. He insisted on another fire, but the surgeons claimed the right to first examine him, and on their report that the bullet might have entered the cavity, hostilities ceased. Mr. Watkins, with great civility, offered his services to bear the wounded man from the field, and on being carried off, the Governor most affably remarked: "D——n it, Watkins, I thought I could give you another shot." (History of Augusta, 1890, p.227.)

After ten years, the Supreme Court of the United States, in *Fletcher v. Peck*, 6 Cranch, 87, having decided that the Yazoo Act was not only constitutional, but could not be repealed to the injury of third persons, Watkins and his friends claimed the decision to be a more substantial vindication of his Digest than had been the precision of his aim in the duel.

Still, with a view of obviating all objection and to appease so influential an opponent, another edition was printed in 1801 from identically the same plates, but omitting the pages containing the Yazoo Act. This explains why the title-page is sometimes dated 1800 and sometimes 1801. The issue, however, had been made, and even this omission did not satisfy the Legislature. It is true that the Watkins brothers secured a small appropriation, but their book was not only never authorized, but in 1800 the Legislature passed a Resolution that "the appropriation of \$2,000 in favor of Robert and George Watkins was solely intended as an advance to carry on a work, which they represented to be a collection of the laws now of force in Georgia; and by no means, nor in any shape, contemplated to establish the same as a Digest or Constitutional arrangement of said laws; nor to give any legislative sanction to the same as a

Code to be received in the Courts of Law and Equity; reserving the revision, expulsion, or sanctioning of the same or any law thereof to future sessions of the Legislature."

And further to emphasize the hostility to this famous Act, a resolution was adopted December, 1800, that "the Commissioners appointed to digest the laws, previous to entering on their duties, shall subscribe the following oath: "I solemnly swear that I will to the best of my power and ability, and agreeable to the Constitution, revise, digest and arrange under proper heads and subjects the Civil and Criminal laws of this State, and that I will in no wise or manner whatsoever insert in said Digest, a certain usurped Act, entitled "An Act for the appropriating a part of the unlocated territory for the payment of the State troops." (Marbury & Crawford, 190-191.)<sup>a</sup>

To carry into effect the provision of the Constitution, Horatio Marbury and Wm. H. Crawford, Esquires, under authority of the Legislature, prepared what was styled a "Digest of the Laws of the State from its Settlement as a British Province in 1755 to the Session of the General Assembly in 1800, inclusive." It was published in the year 1802. In it the laws of the State were brought together and bound in one volume. The entire acts, embracing captions, preambles, and all the signatures, were reprinted. They were arranged alphabetically according to subject-matter. The book was not a revision, nor was it a digest; it was a compilation, pure and simple.<sup>12</sup> It omitted many acts which had been repealed, and Watkins' Digest,—now out of print and very scarce and the most valuable of all our books for historical purposes—while giving in chronological order our known statutes, yet failed to print, except by title, many acts which had been repealed:—others because they were obsolete, or "repugnant to the form of our Government" (p. 54). —a round-about way of saying "unconstitutional". Still Watkins' contains the great body of Colonial and early statute law.<sup>a</sup>

## THE JUDICIARY ACT OF 1799.

Under the authority conferred upon it in the Constitution of 1798, the General Assembly, by the Judiciary Act of 1799 (Cobb's Digest 1851, p. 1135), established the procedure in the Superior and Inferior Courts. The jurisdiction of and the procedure in the Justices' Court remained substantially as provided in the Act of 1797,<sup>20</sup> but it was provided that no Justice should "sustain or try any satisfaction in damages for any trespass on the person or property."<sup>21</sup>

It may be said with reasonable accuracy that this Act marks the real beginning of our present system.

It was a system which embraced three courts. The Superior Court with exclusive jurisdiction in criminal cases and land cases, and concurrent jurisdiction with the Inferior Court in all other civil cases. The Inferior Court with exclusive jurisdiction in matters of probate, and concurrent jurisdiction with the Superior Court in all civil cases except land cases. The Justices' Court with civil jurisdiction of suits on debts where the amount involved was thirty dollars or less, and with such jurisdiction in criminal matters as were derivable from the common law.

The Superior Court had the right to review the judgments of all the other courts. There was no court which had the right to review the judgments of the Superior Court.

In 1799 there were twenty-four counties in the State. These were grouped into three circuits, Eastern, Middle and Western, and there was a judge for each circuit.

The distinguishing defect in this system was the absence of a single court of last resort. There were three courts of last resort independent of each other, and whenever a new circuit was created a new independent court of last resort came into existence.<sup>22</sup>

Georgia alone of any American commonwealth had a judicial system without an Appellate Court. Georgia alone had no tribunal to correct errors affecting the rights of the private citizen, and Georgia alone of any Anglo-Saxon

State attempted for many years to conduct government without a supreme judicial tribunal necessary to preserve uniformity in the administration of justice. It was not accidental, but intentional, and in pursuance of a definite public policy. It furnishes a rare fact in history, worthy of study by the student of political affairs.

Immediately after the Declaration of Independence, twelve of the newly-created States had courts for the correction of errors. These Supreme Courts had begun to publish their opinions, and before the year 1800, as many as thirty volumes of these early reports had been printed.

But there was nothing like this in Georgia. Neither of our three early Constitutions said anything about a Supreme Court. The Constitution of 1798 authorized the Superior Court to correct errors in and to grant new trials; but the new trials were to be granted and the errors were to be corrected in the county in which the action originated. But there was no appeal to any other or higher tribunal.

The next year after the adoption of the Constitution the Legislature passed the Judiciary Act of 1799, a statute which has permanently affected and molded our whole system. It was the great work of great men. They endeavored to supply the deficiency in the Constitution by establishing a kind of Court for the correction of errors. The 59th section of the Act of 1799 provided that the Judges of the Superior Court should meet annually at the seat of government for the purpose of making rules and while they were thus in convention, the Judges were required to "determine upon such points as may be reserved for argument, and which may require a uniform decision."

This in effect would have been a Supreme Court composed of the Superior Court Judges sitting in banc—somewhat after the fashion of the one then in South Carolina, and not essentially different from the Court of King's Bench in England and the Supreme Court of the United States, where the Judges of the Appellate Court are also Judges of the Circuit Court.

But this provision of the Judiciary Act was never allowed to become operative. So much of the Act of 1799, as required the Judges to meet at the seat of government to make rules of court was allowed to remain of force, but the provision that they should there "determine cases reserved for argument" was repealed by the Act of 1801, and—"all points reserved for argument, and now awaiting a decision at the seat of government are hereby directed to be sent back to the respective counties from whence they have been sent, to be there decided by the presiding judge."—Watkins' Digest 39 (1), 708 (59); Clayton's Digest 38 (3 and 4).

So that, what the wisdom of the authors of the Judiciary Act of 1799, had attempted in creating, at least, a statutory Supreme Court, was destroyed by the Legislature of 1801, and the State was led to a continuance of an experiment that, in the end, proved to be an admitted and pronounced failure.<sup>22</sup>

It evidently did not require very much to run the government, and taxes may have been of less importance than now; \$1,000 of old public debt could be paid with one dollar, and judges only received a salary of \$1,400, besides being required by the Judiciary Act of 1797 and that of 1799 to preside in each circuit alternately, "so that no two terms shall be held by the same judge in the same circuit successively," which practice is still followed in North and South Carolina. (Marbury & C. 272, 308, 60)

Strange to say, the author of the Judiciary Act is not certainly known. The credit for its preparation has been assigned by Col. Chas. C. Jones to Abraham Baldwin; by Judge Richard H. Clark to Robert Stith, one of the early judges of the Superior Court; while many others refer it to Arthur Fort. It is possible that all these claims may be well founded. There were several Judiciary Acts before that of 1799, and the latter is largely a revision of those which had previously been adopted. So that each of these reputed authors may have had part in one or the other of these Acts.<sup>23</sup>

David Dudley Field is justly regarded as the foremost law reformer of the age. He has received international recognition; and his fame is as assured as that of Kent or Story. His admirers are justly indignant that in many jurisdictions whole sections and titles from his Code of Civil Procedure have been copied, almost word for word, without any acknowledgment to him. But what shall we say of the injustice of fame, when even in our own state we do not know the name of that unheralded reformer, who, in 1799, in the legislature of the then sparsely settled state of Georgia, introduced and passed the Judiciary Act, which in form and substance accomplished exactly the same result wrought by Mr. Field by his Civil Code.

Abroad our jurisprudence has utterly failed to win recognition for the priority and success of this first and most vital of the law reforms.

Forerunner that she was, multitudes of well posted lawyers are ignorant that back in the eighteenth century, at a time when the system of special pleading was regarded as the very embodiment of perfection, Georgia, was first in condemning its evils, and was the pioneer in establishing the simple and wise method of procedure which England herself has substituted for the arbitrary, though logical, system of Coke and Littleton.

The very fact that Georgia so outran all others, and had had the new system in successful operation half a century before other states even began to discuss the question, seems to have resulted in her being absolutely ignored as the originator of the greatest of the modern law reforms.

The Act of 1799 in terms abolished special pleading; repealed all distinction between forms of action; in a sentence requiring the "cause of action to be fully, plainly and distinctly set forth," announced a principle governing pleadings which a century of actual experience has demonstrated to be both comprehensive and elastic enough to meet the requirements of the simplest or most complicated case.\*\*

The curious customs of that day which Watkins' Digest

preserves have now more interest for the reader than the body of useful law which has survived. But we must not forget that it was these early Georgians who were the first law reformers and the first to endeavor to get rid of the encumbering technicalities of the English procedure. A number of these early statutes contain provisions permitting the defendant to plead the general issue, thereby getting rid of Replication, Rebutter, Sur-rebutter, Rejoinder and Sur-rejoinder, and many of the inconveniences of special pleading. But the great and abiding work of these men was the Judiciary Act of 1799, which is still the framework of our judicial system. They were familiar with the common law methods as administered in the Colony. They had seen the evil results of the radical changes to regulate the courts, made during the Revolution and in the light of their experience with what was too formal and what was too loose they adopted a happy medium—the Judiciary Act of 1799—which, with all of its admirable qualities, is still of force. Let us not forget that for the simplicity of our practice and the advantages of our procedure, we are indebted to the Georgia Bar of the 18th Century.\*

## APPENDIX

### ADDRESSES AND PAPERS USED IN THIS COMPILATION

The Arabic numeral following a passage indicates that it is quoted, generally literally, from the address or paper indicated.

- (1) Walter B. Hill—"Bar Associations," 5 G. B. A. (1889) 51.
- (2) Walter B. Hill—"The History, Objects and Achievements of the Georgia Bar Association," 19 G. B. A. (1902) 119.
- (3) Joseph R. Lamar—"Georgia Law Books," 15 G. B. A. (1898) 118.
- (4) Alexander C. King—"Sketch of the History of Land Titles in Georgia," 2 G. B. A. (1885) 126.
- (5) N. J. Hammond—"Georgia Driftwood," 13 G. B. A. (1896) 171.
- (6) Joseph R. Lamar—"The Bench and Bar of Georgia During the Eighteenth Century," 30 G. B. A. (1913) 52.
- (7) Walter G. Charlton—"A Lawyerless Court," 18 G. B. A. (1902) 261.
- (8) Mrs. J. Render Terrill—"The Georgia Lawyer as Viewed by a Woman," 18 G. B. A. (1901) 197.
- (9) Charlton E. Battle—"The Georgia-Tennessee Boundary Dispute," 19 G. B. A. (1902) 87.
- (10) Orville A. Park—"The Military Record of the Georgia Bar," 35 G. B. A. (1918) 53.
- (11) Chas. C. Jones, Jr.—"Compensation of the Judiciary," 1 G. B. A. (1884) 89.
- (12) Jno. L. Hopkins—"The Evolution of the Code," 16 G. B. A. (1899) 66.
- (13) Walter McElreath—"The Provisions of the Constitution of 1877 Relating to Finance, Taxation and the Public Debt," 30 G. B. A. (1913) 162.
- (14) Benj. E. Pierce—"Taxation," 38 G. B. A. (1921).
- (15) Chas. C. Jones, Jr.—"Biographical Sketch of Jno. McPherson Berrien," 8 G. B. A. (1891) 92.
- (16) Luther Z. Rosser—"Some Old Saws Resharpener," 37 G. B. A. (1920) 85.
- (17) Andrew J. Cobb—"Report of Permanent Commission on the Revision of the Judicial System," 30 G. B. A. (1913) 199.
- (18) William M. Reese—"The Constitutions of Georgia," 2 G. B. A. (1885) 90.
- (20) Andrew J. Cobb—"Report of Committee on Jurisprudence, Law Reform and Procedure," 27 G. B. A. (1910) 72.
- (21) Walter McElreath—"Justice Courts" 27 G. B. A. (1910) 152.
- (22) Samuel Hall—"The Jury System," 2 G. B. A. (1885) 111.

- (23) Edgar Watkins,—“A Constitutional Convention Unnecessary,” 30 G. B. A. (1913) 183.
- (24) Joel Branham,—“The Emancipation of Woman in Georgia,” 31 G. B. A. (1914) 184.
- (25) Robert C. Alston,—“A State within the State of Georgia,” 29 G. B. A. (1912) 137.
- (26) John W. Park,—“Georgia as a Litigant in the Supreme Court of the United States,” 13 G. B. A. (1896) 106.
- (27) Robert C. Alston,—“Development of the Federal Constitution,” 31 G. B. A. (1914) 100.
- (28) Joseph R. Lamar,—“Georgia’s Contribution to Law Reform,” 9 G. B. A. (1892) 62.
- (29) Z. D. Harrison,—“The Supreme Court of Georgia,” 33 G. B. A. (1916) 122.
- (30) William B. Hornblower,—“The Constitution in 1795 and in 1895,” 12 G. B. A., (1895) 55.
- (31) William W. Gordon, Jr.,—“Defects in our Criminal Procedure,” 23 G. B. A. (1906) 236.
- (32) R. D. Meader,—“The Circuit Rider by the Sea,” 31 G. B. A. (1914) 227.
- (33) Joseph R. Lamar,—“History of the Establishment of the Supreme Court of Georgia,” 24 G. B. A. (1907) 85.
- (34) Andrew J. Cobb,—“Report of Committee on Legal Education and Admission to the Bar,” 26 G. B. A. (1909) 76.
- (35) Lamar C. Rucker,—“Marriage and Divorce in Georgia,” 32 G. B. A. (1915) 196.
- (36) John W. Akin,—“The Circuit Judge,” 4 G. B. A. (1887) 84.

## THE FRONTIERSMAN IN THE FIELD OF EARLY LEGISLATION.

---

PAPER BY  
A. L. HENSON,  
OF CALHOUN.

---

The ever changing American frontier of the early days was sharply distinguished from the European frontier—a fortified boundary line running through dense population; from the Chinese frontier—the great wall; and from the mediaeval frontier of Scotland—the debatable ground at the head of Solway Firth. No natural feature existed to mark the place where the territory of the settlers began and where that of the Indian ended. This American frontier had many distinguishing features. It was the meeting point between savagery and civilization—the edge of settlement—and in the march of civilization westward it was the outer edge of the farthest wave.

The settled State very carefully guarded its frontier. This was the first duty to its citizens. Not so with our American frontier. It was its function to protect the interior, and to compensate for this, certain privileges and immunities such as exemption from taxes, grant of lands and the services of ministers *gratis* was not uncommon.

Every student of history has observed how in the settlement of America European life entered the continent and how the rugged environment influenced that life and reacted on Europe. The frontier was the line of the most rapid and effective Americanism. The wilderness all but mastered the colonist. It found him European in dress, industries, tools, arms and modes of travel. It took him from the coach and placed him in the birch canoe. It stripped him of the

garments of civilization and clothed him in the hunting skins of the red men. It put him in the log hut of the Cherokee and Iriquois and ran an Indian palisade around him. Soon he plants Indian corn and plows ground with a sharp stick. He shouts the war cry and takes scalps in orthodox fashion. The environment is at first stronger than the man, but he must accept the condition which it furnishes or perish, so he fits himself into the Indian clearings and follows the Indian trails. Little by little he transforms the wilderness—he conquers it—but the outcome is not European, not simply the development of the Germanic germs any more than the first phenomenon was the cause of the reversion to the Germanic mark. The fact is, we have a new product and it is American.

At first the frontier was the Atlantic Coast. It was the frontier of Europe in a very large sense. Moving westwardly the frontier becomes more and more American. As successive terminal moraines result from successive glaciations, so each frontier settlement leaves its traces behind it and when it becomes a settled area the region still partakes of the frontier characteristics. Thus, the frontier has meant a steady movement away from European influences; a steady growth of independence along American lines, and thus has the frontiersman left on every settled and established community his impress largely molding for all time the political, social and economic order.

It is the character of this settler of the frontier belt, who carved out of the wilderness his truck patches and who carried civilization to the "hither edge of free land," and particularly as that character is reflected in his legislation, petitions to the General Court and other legal papers and records, that it shall be the purpose of this paper to discuss.

The delicate shades of thought and feeling of a people, and especially of the Anglo-Saxon people, with their intense love of independent legislative bodies, of the trial by jury and the right to assemble and petition, is more truly reflected in official records than in its literature. Witness the presentments of your local grand jury and see with what intimate

knowledge they discuss local civic affairs and how truly they interpret the thought and feelings of their fellows.

When the West had become the East and after many of the "indenture servants" had completed terms of service to the proprietors on the coast and had advanced into the forests and established frontier settlements the conclusion was reached that the best way of "settling in co-habitation upon the said land," runs a quaint statute, "frontiers within this government will be by encouragement to induce societies of men to undertake the same." In this statute it was declared to be inexpedient to have less than twenty fighting men in each "society" and provision was made for a grant of land to each society (town) for a land grant of not less than ten thousand acres and not more than thirty thousand acres upon any of the frontiers to be held in common by the society. The statute continues: "provided always and it shall be the true intent of this Act that for every five hundred acres of land to be granted in pursuance of this Act there shall be and shall be continually kept upon said land one Christian man between the ages of sixteen and sixty years of age, perfect of limb, able and fit for service, who shall also be continually provided with a well fixed musquett, or fuzee, a good pistol, sharp simeter, tomahawk, and five pounds of good clean pistol powder and twenty pounds of sizable leaden bullets or swan or goose shot to be kept within the fort directed by this Act, beside the powder and shot for his necessary or useful shooting of game."

Within two years the society was to "cause a half-acre of the middle of the co-habitation to be palisaded with good sound palisades, at least thirteen feet long, six inches in diameter in the middle of the length thereof and set double at least three feet in the ground."

As early as 1645 these "societies" were officially designated as frontier towns and so necessary were they to the security of the colonists of the east that the inhabitants were forbidden under severe penalties to move without permission.

An Act of March 12, 1694, by the General Court of

Massachusetts enumerated the frontier towns which the inhabitants were forbidden to desert on pain of losing their lands, if landholders; and imprisonment if not landholders, unless permission was first obtained. These frontier towns were: Wells, York, Kittery, Amesbury, Haverhill, Dunstable, Clemsford, Groton, Lancaster, Malborough and Deerfield. In March, 1699, Brookfield, Madon and Woodstock, together with seven others, "tho they be not frontiers as those towns first named yet bye more open than many others to an attack of the enemy."

In the spring of 1704 the General Court of Connecticut followed closely the Act of Massachusetts and named as her frontier towns not to be deserted: Symsbury, Waterbury, Danbury, Colchester, Windham, Mansfield and Plainfield. Concord, Sudbury and Dedham "being inland towns and but thinly peopled" were also subject to such legislation.

About the close of the seventeenth and the beginning of the eighteenth century there was an officially designated frontier line through New England. The line, passing through the towns enumerated represents: (1) the outskirts of settlement along the eastern coast and up the Merrimac and its tributaries, a region threatened from Indian country by way of the Winnepesaukee Lake; (2) the end of the ribbon of settlement up the Connecticut Valley, menaced by the Canadian Indians by way of Lake Champlain and the Winooski River route to the Connecticut; (3) boundary towns which marked the edge of that inferior agricultural regions where the hard crystalline rocks furnish a later foundation for Shay's rebellion, opposition to the adoption of the Federal Constitution and the abandoned farm; and (4) the isolated intervale of Brookfield which lay immediately between these frontiers.

It should be borne in mind that this seemingly hard limitation placed upon the liberties of the inhabitants of the frontier towns was quite as necessary to the frontier town as to the town along the coast. The inhabitants had built

log huts, and felled forests for their truck patches on the faith that all would remain within the settlement and the faithful observance of this obligation on the part of each was necessary for the preservation of all.

True to the experience of all other states, the seizing of land afforded the principal causes for litigation and complaint. The absentee landlord living in security in the east while the frontiersman guarded his land was the subject of no little contempt. The actual ownership of the land made very little difference at first. There was plenty of land but not plenty of men to hold it. Here began the fight on the part of the proprietors to establish the feudal system of Europe and the equally determined fight on the part of the frontiersman to create an entirely new system of tenure, the nature of which they didn't at that time know. The results of this fight are the laws now on our statute books governing alienation and ownership of land. A petition of Deerfield to the General Court of Massachusetts in 1678 indicates their feelings with respect to the distribution of the land:

"You may be pleased to know that the very principle & best of the land; the best for soile; the best for situation; as lying ye center and middle of the town; & as to quantity, nere half, belongs unto eight or 9 proprietors each and every of which are never like to come to a settlement amongst us, which we have formerly found grievous & doe Judge for the future will be found intollerable if not altered. Or minister, Mr. Mather-----& we ourselves are much discouraged as judging the planation will be spoiled if these proprietors may not be begged, or will not be bought up on very easy terms out of their Right. . . . But as long as the maine of the plantation lies in men's hands that can't improve it themselves, neither are ever like to putt such tenants on to it as shall be likely to advance the good of ye place in civil or sacred respects; he, ourselves and all others that think of going to it are much discouraged."

In another communication to the Court they say: "let the Great Men whom the land belongs to come and defend it."

Here is their peculiar doctrine of equality as expressed in the system of granting land within the towns by commoners:

"And, whereas Lotts are Now Laid out for the most part Equally to Rich and Poore, Partly to Keepe the towne from scattering to farr, and Partly charitie and Respect to men of meaner Estate, Yet that Equallitie (which is the rule of God) May be observed, we Covenant and Agree that in a second Divition and so through all other Divitions of Land the mater shall be drawne as neere to equallitie according to men's estates as wee are able to doe, That he which hath now more then his estate Deserveth in home lotts and entervale Lotts shall haue so much Less; and he that hath less then his estate Deserveth shall haue so much more."

A petition from Wells, June 30th, 1689, will help to understand the military situation of the early frontier.

1. "That yo Hon will please to send us speedily twenty Eight good brisk men that may be serviceable as a guard to us whilst we get in our Harvest of Hay & Corn, (we being unable to Defend ouselves & to Do our work), & also Per-sue and Destroy the Enemy as occasion may require.

2. That these men may be compleatly furnished with Arms, Amunition & Provision, and that upon the Country's account, it being a Generall War."

Dunstable, "still weak and unable to both keep our Gar-risons and to send men to get hay for Cattle; without doeing which wee cannot subsist," petitioned July 23rd, 1689, for twenty footmen for a month "to scourt about the towne while wee get our hay." Otherwise, they say, they must be forced to leave. Still more indicative of this temper is the petition of Lancaster, March 11, 1675-6, to the Governor and Council: "As God has made you father over us so you will have a father's pity to us." They asked a guard of men and aid, without which they must leave. Deerfield plead in 1678 to the General Court, "unless you will be pleased to take us (out of your fatherlike pity) and Cherish us in yo Bosomes we are like Suddainly to breathe out our Last Breath."

After permanent settlements had been established the

frontiersmen began to meet the eastern proprietor on the forum and in the courts. Many lively forensic fights ensued. Every encounter resulted in the settling of things toward that goal we are so proud to call Americanism. The frontiersman began to mold policies, and a gradual readjustment in the distribution of lands resulted. In the sixteenth century provisions for reserving lands within the granted township for the support of an approved minister and for schools appear and it became a common feature of grants in the seventeenth century.

For lack of time let us pass from the early struggles of the frontiersman and view him, stripped of his anxiety and constant fear of the Red Man, three or four generations later when he has had time to breathe the free air of the domain which he has all but conquered. He no longer struggles for mere existence but his struggle to exist as a free and independent man has just begun. We now see him in an attempt to prevent his land from falling into the hands of the eastern proprietors and we witness Bacon's Rebellion. We see Governor Spotswood, of Virginia, chafing under the galling indignity of the "democracy made up of small land owners, new immigrants and indenture servants." We see this frontiersman making new and unheard of demands through Jefferson in the "War of Regulation" which preceded the War of Revolution. He wants estates tail abolished; religious freedom established; the laws of primogeniture materially altered; a brand new rule of descent and distribution; and he wants slavery abolished. Now we see him in the several councils or legislatures of the colonies and at last in general council at Philadelphia where he grasps the old Liberty Bell and announces to the world "The Old Order Changeth" and when he returns from his eight years of faithful service in the Continental Armies the change has been wrought.

In this paper we cannot follow him in detail as he subdues a wilderness and reclaims an empire in the Mississippi Valley and its thirty-six thousand miles of tributary streams; the basin of the Great Lakes and the black prairies of the

cotton belt but let us hear Seward declare the result in an address delivered in Madison, Wisconsin, in the fall of 1860:

"The empire established at Washington is of less than a hundred years' formation. It was the Empire of Thirteen Atlantic States. Still, practically, the mission of that Empire is fulfilled. The power that directs it is ready to pass away from those thirteen states, and although held and exercised under the same constitution and national form of government, yet is now in the very act of being transferred from the thirteen states east of the Allegheny mountains and on the coast of the Atlantic Ocean, to twenty states that lie west of the Alleghenies, and stretch away from their base to the base of the Rocky Mountains on the West . . ., when the next census shall reveal your power" said he to the people of the west, "you will be found to be the masters of the United States of America and through them the dominating political power of the world."

## TAXATION.

---

PAPER BY  
BENJ. E. PIERCE,  
OF AUGUSTA.

---

My subject, that of public revenue, or taxation as we know it, is as broad as the universe and as old as civilization. However, I hope you will not be alarmed, for I do not propose to read a treatise upon the various laws, which have been passed touching the same, for if I did, it might (?) weary you, neither am I going to attempt to tell you all that I know (?) about the subject, for that would be to read a book—how thick, I shall not say. Neither shall I enter upon a lengthy philosophical discussion of economics but I shall only attempt a general resume of the origin and growth of taxation.

It is difficult to fully realize that taxation as we know it today is of comparatively recent growth, and marks a late stage in the development of public revenues. Nevertheless, the problem of providing revenue for the maintenance and support of government, has been one which has claimed the attention of mankind, in one form or another, since the earliest dawn of civilization. Each age has its own system of public revenues. It has been said that taxation "is only an historical category." When man lived unto himself alone, if we accept the theory of some, there was no need of taxation, as there was no such thing as organized society or established government. However, when man realized that he was a social being, it was then for the first time that he felt a craving for the companionship of others of his kind—it was then that he began to dwell in closer contact

with his fellow-man. Thus was builded the first community.

At this stage of man's development, the demand for a leader or head became imperative, and someone of each community, stronger than his brothers, asserted his authority and became the leader or chief of the tribe. Then arose for the first time a necessity for providing some manner of maintenance and support for such leader and his household. As civilization advanced, Government became more permanently established; the demands thereof became greater, and step by step, the system of taxation developed. It may be said to be a barometer of civilization, for nothing has marked the progress of civilization more clearly than the revenue laws of past ages. As the times changed, taxation has changed; as government became more complex, taxation became more complex.

One of the most singular commentaries upon the progress of civilization as marked by taxation is said to be that the first tax ever levied upon industry was upon an industry of depravity—by Caligula in A. D. 37-41, and that the first tax ever levied on capital was on capital employed in the operation of a rather degraded business—by Vespasian in 69-79 A. D.

Someone has said that its growth might well be illustrated by etymology; that if we look at the many and varied terms applied to what we call tax, we will find every shade of its development reflected in the words and terms used in former centuries, as well as those employed today. This growth has been divided into seven different stages as follows: (1) The first stage was when the subject made a gift to the government, which is indicated in the mediaeval term *donum*, said to have been the custom for many centuries. (2) The second stage was reached when the government humbly implored or prayed the people for support—indicated in the phrase *precarium*. (3) The third stage of its growth was when the subject first felt he was doing the State a favor by contributing something to its support—as expressed in the Latin term *adjutorium*, in the French *aide* and in the Eng-

lish terms, aid, subsidy and contribution of that period.

(4) The fourth stage brings out the idea of the citizen making a sacrifice for the State—surrendering something for its benefit, said to be indicated in the Old French term *gabelle*, and in the Italian *dazio*. (5) In the fifth stage the feeling of obligation first began to develop in the citizen, indicated by the word, duty, which term is today used in England to indicate some of the most important direct taxes imposed, and not until the (6) sixth stage was reached was there any idea of compulsion on the part of the State, touching the collection of its revenues, indicated in the word *impost*, and words of like meaning, in the language of the different nations. It was at this stage that the State for the first time imposed upon its subjects the revenues of government. (7) Finally the seventh was reached when the State fixed a rate and an arbitrary assessment upon property without any volition of the tax payer. The last stage is taxation as we know it today.

Indeed taxation, in one form or another, has been one of the most perplexing problems, with which men and nations have had to deal, since time immemorial. How Jesus solved the problem of the payment of tribute is told of in Matthew 17: "And when they were come to Capernaum, they that received tribute money came to Peter, and said, 'Doth not your Master pay tribute?' He saith, 'Yes,' and when he came into the house, Jesus prevented him, saying, 'What thinkest thou, Simon? of whom do the kings of the earth take custom or tribute? of their own children, or of strangers?' Peter saith unto him, 'Of strangers.' Jesus saith unto him, 'Then are the children free. Notwithstanding, lest we should offend them, go thou to the sea, and cast an hook, and take up the fish that first cometh up; and when thou has opened his mouth, thou shalt find a piece of money, take that, and give unto them for me and thee.' "

Man has always, it would seem, more or less, resented the payment of taxes. The Romans resented it for the reason that they deemed it a badge of disgrace for a free man to be taxed—"nota captivitatis," they called it, and for

hundreds of years the imperial government of Rome was supported exclusively from the plunder of conquered nations. Such exemption from taxation, so enjoyed by the Romans, however, did not last, for there came a time in Rome when her ruthless rulers, in their greed for revenue, went so far as to farm out the collection of taxes to the highest bidder. Indeed, it is claimed by some, that the downfall of the Roman Empire was due more to the unrest created by the universal grievance of unjust taxation imposed upon the Roman people, not for the maintenance and integrity of the Empire, but to be spent by parasites and prostitute rulers in profligate living, coupled with the lack of power or organization in such rulers, than to want of virtue in the Roman people. For at the very time Rome was overrun by the barbarians, one writer says, "In spite of the silly jargon of the moralists who enlarge upon the crimes of Rome and upon the decadence of the Roman people at this time, there was never in fact a time when the mass of the population of the great Empire was more virtuous, more intelligent and more capable of efficient organization." So we see that the barriers thus broken down by such lack of organization of the Roman rulers, and the universal grievance of unjust taxation, as it were, opened the gates of Rome to the hordes of Goths, Vandals, Franks, Burgundians and other barbarians, and permitted them to enter that imperial city and revel amid the ruins of a mighty civilization.

During the reign of one of Rome's most cruel rulers, that of Nero, we read that, he undertook "a journey to Greece with a large following to give a performance at the National Games" instituted by him, called the Neronic Games," an imitation of the Olympic Games of Greece, and when the Greeks applauded loudly a performance, Nero was so flattered, that he immediately issued an edict granting the Greeks immunity from future taxation, which was supposed to be a most singular honor. It is said that after Joan of Arc had "won a kingdom and crowned its king" when she was brought before that king, he said to her, "You have saved the crown, speak—require—demand; and

whatsoever grace you ask, it shall be granted, though it make the kingdom poor to meet it," and she replied, "Then O gentle king, if out of your compassion you will speak the word, I pray you give commandment, that my village, poor and hard pressed by reason of the war, may have its taxes remitted." To which the knig replied, "It is so commanded, say on." "That is all," said Joan of Arc. "All?" said the king. "Nothing but that?" "It is all," she said. "I have no other desire." "But that is nothing—less than nothing. Ask—do not be afraid." And she replied, "Indeed, I cannot gentle king. Do not press me, I will not have aught else, but only this alone." And so it was in the village of Domremi for a period of some three hundred and sixty years, and during all these years the tax gatherer always passed by the village of Domremi, as in the tax books for those years, there was a blank page headed, "Doremi," "Rien—La Purcelle," (Nothing—the Maid of Orleans). This promise it is said, was faithfully kept by France down until the French Revolution, when in that malstrom of human woe and human suffering, it was blotted out, as it were, by the blood of thousands shed during that holocaust.

How the subject of taxation has shaped the destiny of our own country, every student of history knows. Indeed "taxation without representation" was one of the prime causes that brought about the American Revolution. The flame kindled by the Stamp Act of the British Parliament was soon fanned into that Revolution, which finally resulted in our independence and the establishment of the government of the United States.

A very interesting account of the arrival of the first stamps issued under that Act in Georgia is given by Mr. McElreath in his admirable work on the Constitution of Georgia, as follows:

"When the stamps arrived (at Savannah), there were in the port between sixty and seventy vessels, waiting for clearance, which could not be obtained on account of the refusal of the people of the colony to allow the use of the stamps necessary to give validity to their clearance papers.

But the necessity for clearing the port seemed so urgent that the people finally consented to allow the use of the stamps for this purpose, but for none other. Their use, even for this purpose, was greatly resented by the people of South Carolina. Georgia was condemned as a 'pensioned government,' which had 'sold her birthright for a mess of pottage, and whose inhabitants should be treated as slaves without ceremony.' It was resolved that no provisions should be shipped to 'that infamous colony;' 'that every vessel trading there should be burnt;' that 'whoever should traffic with them should be put to death.' These inflammatory words were not an exaggeration of the people of South Carolina, for two vessels, about to sail from Charleston to Savannah, were captured and taken back into port and destroyed with their cargoes."

It would be interesting to trace the development of the tax legislation of the Congress of the United States, from the adoption of the Constitution down to date, and to discuss some of the decisions rendered by the Supreme Court of the United States, construing the constitutionality thereof, but time will not permit of any lengthy discussion.

The extent to which the revenue clause of the Constitution has been stretched would no doubt greatly surprise the framers of that instrument could they return to this mundane sphere. If there is anything that has been left out of the category of taxable objects, it is hard to imagine. Indeed everything except the stars in their courses seems to have been covered.

To enumerate a few of the things which have been taxed under the head "excise" alone, makes us wonder at the ingenuity of our national solons. For instance, there is a sales tax on pianos, organs, graphophones, phonographs, talking machines, music boxes, tennis rackets, skates, snow shoes, skis, toboggans, canoe paddles and cushions, baseball bats, baseball gloves, basket balls, base balls, tennis balls and golf balls; fishing rods and reels, chess, checker boards and dice; chewing gum, cameras, candy, fire arms, knives, electric fans, thermos bottles; cigar and cigarette holders, boots and

shoes; carpets and rugs; pocket books, umbrellas, fans, men's hose and women's stockings, and so on without number.

What the venerable framers of the Constitution would think of some of our tax acts, is possibly illustrated by what the people of Pennsylvania thought of the Act of Congress, imposing a tax upon whiskey, shortly after the adoption of the Constitution. That Act aroused such indignation and resentment that it brought about what is known as the "Whiskey Rebellion." Think of it! The people of Philadelphia were wont to fight to even prevent a tax on liquor, and yet, we sit supinely by (?) and almost without a murmur, permit Congress to even prohibit the manufacture and sale thereof. My! My! How the times do change.

Nevertheless, Congress is not unlike the legislative bodies of past ages of other countries in the subject matter of tax legislation, for in England more than a hundred years ago, we read that, "The school boy whipped his taxed top; the beardless youth drove his taxed horse with a taxed bridle on a taxed road; and the dying Englishman, pouring his medicine which has paid seven per cent. into a spoon which has paid fifteen per cent., flings himself back upon his bed which has paid twenty-two per cent., and expires in the arms of an apothecary, who has paid a license of one hundred pounds for the privilege of putting him to death." The laws of the present time compare favorably with such laws.

Some of the Acts of Congress passed under the guise of raising revenue were enacted for no other purpose than to prohibit. Take for instance, the Act imposing ten per cent. on all goods manufactured in establishments employing children under a certain age. Congress first sought to prohibit this by preventing such goods, so manufactured, from being transported in inter-state commerce. This the Supreme Court held was an infringement of the police powers of the States, and in the case of *Hammer vs Dagenhart*, 247 U. S., 251, declared the Act unconstitutional. Immediately thereafter Congress accomplished the same result un-

der the revenue clause of the Constitution, by placing a prohibitive tax of ten per cent. on the articles so manufactured. Numerous other instances might be cited, but we pass on.

It might be interesting to know that one of the earliest tax cases decided by the Supreme Court of the United States was a case which originated in the District Court of the United States in Chatham County, Georgia. It was the case of *Stead's Executors v. Course*, reported in 4th Cranch, 403. That decision was rendered by that most distinguished of all American jurists, Chief Justice John Marshall. The question involved was whether or not a sheriff's deed was void where it was made to appear that a larger amount of land had been sold under a tax *fi. fa.* than was necessary to raise the amount due thereunder. This, the Court held, could not be done, and that such a deed was void, under the Act of 1790, declaring that where there was no personal property to be found, then the execution should be levied "on the land of such defaulter, or so much thereof as will pay the amount of taxes due."

A deed made under similar circumstances would likewise be void today. Thus the principle enunciated in that decision of a hundred years ago, is the law of Georgia at this time.

Some of the earlier tax acts of Georgia would seem anomalous to us at this time. Take for instance the Act of December 5, 1801, Georgia Laws 1801-1810, taxing all suits commenced in the superior, inferior or mayor's courts. This law was soon repealed, however, as the people of Georgia realized that the courts should be open to all who had causes to be tried, without let or hindrance in the filing of the same.

Another interesting part of that Act, was that it provided that "the justices of the inferior courts and the justices of the peace of the respective counties of this State, shall be and they are hereby authorized and required to elect the receiver or receivers of tax returns (as the case may be) for the time being, and collectors of taxes in their respective counties."

Such acts are only interesting, however, as a matter of history. So let us turn our attention to our present tax system for a moment.

In approaching the subject of taxation from the standpoint of a lawyer, or from the standpoint of legislation, one must approach the same with his mind untrammelled with any fine spun theories of abstract justice, as to the rights of the individual tax payer; for as taxation is the mainstay of government, no such fine spun theory of abstract justice can be allowed to control. In the enactment of tax laws however, it should always be borne in mind that all taxation ought to be equally distributed as far as the same can be done, that the burden thereof might be as light as possible upon the individual tax payer.

A reading of our present tax laws will disclose that this principle would seem to have been the guide of our legislators, and that Georgia's tax laws will compare favorably with the tax laws of any of the other States of the Union, or of the governments of any previous time. While we may criticize the legislature of Georgia for many of its enactments, yet, if we would be fair, we must accord to our legislators, in the enactment of our *tax laws*, a statesmanship of high order. Some of course will differ with me, nevertheless from my observation of twenty years at the bar, I am convinced that this is true. I do not mean to assert that they are perfect—but then no laws are perfect.

None of the States of the Union has left more to the individual taxpayer than has the State of Georgia. Under our law, every tax payer, who acts honestly, is practically his own tax assessor. He is required to make a return of his property, and at the same time, place a valuation thereon; and when he fails to make a return, or to place a fair valuation upon his property when it is returned, then it is that he violates his duty to the State; then it is that he becomes a fraudulent taxpayer. Of the fraudulent taxpayer, Mr. Justice Lumpkin in the case of *Payne v. Coursey*, 20th Georgia, said 'The smuggler defrauds the Government, but cheapens the commodity to his neighbor, whereas,

the fraudulent taxpayer—saddles his neighbors and fellow citizens with that which under a false oath, he withholds from Caesar.”

There is a law in Switzerland, we are told, whereby the State, upon the death of a person, takes possession of all his property and holds the same until an exact inventory is filed of all property owned by the deceased for a period of years, and if such inventory discloses that the taxpayer had practiced a fraud in the making of returns, his estate is made to pay punitive taxes for such period. It is said that such a law, regardless of its objectionable features, did much to compel an honest return of property by all taxpayers. Such laws as these are brought about by the citizens' persistent efforts to escape his just share of the burden of government.

A certain writer upon political economy and finance in one of his “Essays on Taxation,” tells of a very queer law of ancient Athens in tax matters, which he says provided:

“If a man thought that he had been assessed too high for the extraordinary property tax or liturgy, as compared with a neighbor who had been passed over, he could call upon the latter to assume the tax; and in case of the neighbor's refusal, he could demand an ‘exchange of property,’ out of the proceeds of which the tax was defrayed.”

In New Zealand this idea, the same writer says, has been carried out by the enactment of a law which requires the taxpayer to pay upon an assessment made by the government, if his valuation is rejected or if he thinks the government's assessment is too high, then the government reserves the right to purchase the property at the valuation at which it was returned by the owner, plus ten per cent. Under such a law every one is forced to be fair, because if he grossly undervalues his property and the government increases the assessment, he must either pay the tax upon the government's assessment or sacrifice his property at his own valuation. Under this law we read, that a large estate of some 84,000 acres of land in New Zealand was taken over by the government, because the government insisted upon a valuation of

£304,826 upon which assessment the owners would not pay. They had returned the same at £260,220. This transaction is said to have been quite a profitable transaction for the government, for the land was sold for much more than its original cost.

There is a section of our Code, the principle of which it seems is not altogether dissimilar to the law of ancient Athens, referred to above, at least as to one's right to compel a fair return of his neighbor's property. The section referred to is Section 1099, which provides that "It is the privilege of any tax payer of the county when a return is made to complain to the receiver at any time before his digest is completed that any return is below the true value of the property, in which case he (the tax receiver) shall notify the person who made the return complained of, if practicable, verbally or by writing, giving him the name of the complainant, and shall proceed to have a new assessment" as provided by the statute.

Of course the object of all such laws is to compel all property to bear its just share of the burden of government. For this purpose I insist that Georgia's laws are fully adequate. The trouble with Georgia is not the lack of laws, but the lack of enforcement. Indeed, her tax officials are left too much to themselves in the performance of their official duties. It seems to me that the general public fail to appreciate the importance of the duties of these officers. As a matter of fact, there is no public officer in the State who holds a more responsible position than does the tax receiver of each county. The State can collect no taxes upon property, until after assessment has been made.

One of the great problems which confronts Georgia today, from the standpoint of taxation, is the problem of compelling intangible personal property to bear its share of the burden of taxation. There was a time in the history of the past when land formed the chief wealth of the nations, but in this commercial age the pendulum of wealth, as it were, has swung from land, in a greater or less degree, to that class of property known as intangible personal property,

such as stocks and bonds, etc., and this kind of property constitutes a great deal of the wealth of nations at this time. Because of its character just how to reach it is the question. The man who owns his million dollars in intangible securities should pay taxes thereon, as well as the man who owns his land and tangible personalty—a dollar is a dollar, whether it be in land or something else. Under the law of Georgia as it is today, all property, in contemplation of law is taxable, according to its fair market value. Whether such method is good economics is a mooted question—some contending that it is and some that it is not. There may be some doubt as to whether such method is good economics, with reference to the taxation of notes and mortgages, on the theory that a great deal of business is done upon borrowed capital, but that it is good economics with reference to the taxation of stocks and bonds in foreign corporations owned by citizens of Georgia, I am fully convinced. For if this were not done a man might reside in Georgia and own his millions in stocks and bonds in foreign corporations and practically escape taxation in Georgia altogether. It is true that Georgia does not tax the stocks and bonds of her domestic corporations, but this is upon the theory that she has already taxed all of the assets of the corporation and to again tax the stocks and bonds in such corporations would be double taxation as against her citizens. This, however, is not true with reference to the ownership of stocks and bonds in foreign corporations. Because even if the assets of such foreign corporation may have been taxed in a foreign State, this is no reason why such stock therein owned by citizens of this State should not be taxed here as all property is taxed. Taxation in a foreign State is no taxation at all so far as Georgia is concerned. If this method were not followed, a man could live in Georgia and enjoy all the protection which the laws of Georgia afford, own his millions in stocks and bonds in foreign corporations, and pay Georgia no taxes at all.

Some of the states of the Union go so far as to tax all the assets of the corporation and then again the stocks and

bonds in such domestic corporation owned by its citizens. For instance, there has just recently been handed down by the Supreme Court of the United States the case of *Fort Smith Lumber Company v. the State of Arkansas*, reported in 64th Law Ed., 532, upholding a law of the State of Arkansas, taxing stock owned by Arkansas corporations in other Arkansas corporations, which exempted such stock when owned by individual citizens. It must be conceded that Georgia's law is more liberal than such laws as these.

How to solve the problems of the method to be pursued, in the taxation of this kind of property, as well as the other problems which confront our tax officials, is a most vital question to the State.

If I were permitted to make a suggestion, it would be to inaugurate some system whereby our tax officials could be more fully instructed in their official duties.

John Stuart Mill in one of his essays said: "A government cannot have too much of the kind of activity which does not impede, but aids and stimulates, individual exertion—The mischief begins when, instead of calling for the activity and powers of individuals and bodies, it substitutes its own activity for theirs; when, instead of informing, advising, and upon occasion denouncing, it makes them work in fetters."

The criticism expressed in the lines quoted, it occurs to me, is not inapplicable to Georgia's attitude towards her tax officials. While she has enacted an "elaborate scheme for the assessment—and the collection of any tax lawfully levied," she has failed to see to it that her tax officials, and especially her tax receivers, are made to realize, that it is only through an honest and fearless administration of their official duties, that that equality of the burden of taxation so much desired can ever be attained.

In this day of progress, men are wont to meet in convention and discuss the problems which confront them. If there were inaugurated a convention of the tax officials of the State, at some centrally located place within the State, where they could meet in convention and discuss among them-

selves the problems which confront them in the performance of their official duties; and where they could be addressed by men learned in tax laws, a step in the right direction would have been taken; and if reform in legislation should be found necessary, they could initiate the proper kind of legislation, which would accomplish the desired end—even to the extent of an amendment to the Constitution. Such a convention would not only make our tax officials more efficient, but it would tend to arouse in the people a clearer conception of their obligation toward the State in tax matters and make them more inclined to co-operate with the tax officials.

Of course, we would all like to be relieved from the payment of taxes, but not until man-made governments shall cease to be, and we shall have our abode in a realm, where the only tribute which will be demanded of us will be a tribute of love, will the payment of taxes cease to be our portion. It therefore behooves us, one and all, to meet this obligation like men and see that others do likewise and then make such burden as light as possible for everyone.

## TENDENCIES OF THE TIMES.

---

### ARE WE GOING FORWARD OR BACKWARD?

---

ADDRESS BY  
RUBEN R. ARNOLD,  
OF ATLANTA.

---

In the mass of utterances that fill the press, the platform, the pulpit, and the very air, it is hard to say anything either interesting or instructive.

To say anything new is almost impossible. To put an old idea in a new form, is nearly as hard. The truth is, about the most novel thing one can do, in this babel of advanced thought, is to present something old.

Many things are called new, but we feel the weight of the aphorism that there is nothing new under the sun. An ocean of stuff has been washed up, in the wake of the great war, which occupies the attention of the world. The field of wisdom, mediocrity, and folly, seems to have been covered.

The age of experimentation in government, in science, in art, and in the social life of the people, seems to be upon us.

In purely scientific, and material, and mechanical matters, we have made vast improvements, and are doing so every day. But, in things political, governmental, and social, the real advancement has not been in proportion to the noise made. In some directions we have progressed, and in others gone backward.

## WE NEED A REST.

Human beings need periods of rest, and so do nations. More than anything else, the world needs a rest right now in new things. Every radical thought or movement is instantly organized, incorporated, capitalized. Everything must have a try-out, and the public must be called on to read about it, to contribute to it, and earnestly urged to adopt it. We are surfeited with novelties.

We should realize that the world is here for a long time to come, that we have plenty of time to work out, in an orderly way, all needful changes, and that we should not try to do everything at once. We cannot over-haul the situation in a day. We should not scrap the whole edifice of civilization until we can furnish a better structure.

It is time for the world to slow down a bit. We have been kicking up a great dust, even if we have attained very little real speed. No one seems content with the commonplace things of life, and, yet we all know that healthy existence is made up in the main of commonplace things. Too many of us want excitement all of the time. Not enough people are willing to do real work. Country life is too slow. Multitudes must move to the cities. This restless spirit results in crime, divorce, suicides, strikes, changes in occupations, embezzlements, extravagance, business failures, and disaster generally. All these things, in the end, by causing so many failures in life, breed blind dissatisfaction with existing institutions, because the man who fails in life, blames everything but himself.

## MERE CHANGE IS NOT PROGRESS.

We seem to have lost our perspective. The time has arrived for some old-fashioned common sense. After a while, when these new views (however wrong) are thrust

upon us long enough, and are advertised widely enough, our deadened senses may finally begin to accept them, and we will acquiesce in anything. The most worthless patent medicine can be advertised, and boosted before the public until many will use it and believe it to be a cure-all.

I feel sometimes that, if any wild notion is insisted on long enough, and loudly enough, by a determined handful of people, the nation will finally accept it. Whether it agrees like the woman accepting an insistent suitor, merely to get rid of him, I do not know. But, certain it is, that many measures have been finally acquiesced in by the public, which the public was never strongly in favor of. We must be prepared to fight mere insistence, and persistence, on the part of those who would have things their own way when we know they are wrong.

We are losing the capacity to be surprised at anything. So many astonishing things have been accomplished, and so many untried experiments are being put to the test, that we seem to have lost our resisting power.

Surely, even in this remarkable age, there must be some limit to change, and there is a difference between real improvement and mere feverish restlessness.

I am aware that, in nature, there is no stability,—no static condition, no absolute rest. But, nature's changes are slow, and usually a matter of growth. The changes which are wrought by storm, tempest, and earthquake, are exceptional, and against the usual order of nature. Human society seems today to be in this condition of storm and tempest. The old proposition, "whatever is, is right," seems to be reversed, and "whatever is, is wrong," substituted.

Men of science tell us that the human race has been on the earth for hundreds of thousands of years. The only

recorded history which we have, covers about six thousand years, and much of that is obtained from inscriptions upon stones, bricks, and other objects, which have long been buried under the shifting sands of the desert, and which the last century has brought to light. This period of six thousand years discloses much misgovernment, much error, much cruelty, much folly, and much pathetic ignorance and superstition.

But, in this long period, mankind, of necessity, has learned many things, and especially that part of the white race which inhabited Europe.

#### LESSONS OF HISTORY USEFUL.

The past history of the world is not altogether barren of good. We are disposed to look at the high mountain peaks of cruelty and misgovernment as typical of the entire past. We overlook the great valleys between, of happy and contented people. In looking back over our own lives, we feel largely the failures, the tragedies, the lost opportunities. The many happy and peaceful hours are forgotten. The impression they made was not so deep and sharp.

Most of the principles governing organized society must have been sound, or the human race would not have survived, progressed and spread over the earth. Surely, the underlying principles of the social compact, which have carried us through the ages, which have enabled us to live through war, famine and revolution, must be based, in large part, upon good reason.

But, the world seems willing now to listen to every effort to tear down what has been. The world seems willing to give ear to every novice with a half-baked idea, who has lungs enough to get the ear of the public, and who makes up in persistence and nerve, what he lacks in know-

ledge of history, science, literature, politics, economics, and common sense. When some men get a faint scent of an idea, even though it be centuries old, they make such a commotion about it as to impress many of the public that something new and startling has been discovered.

Do not believe, from the way I am starting out, that I am a pessimist. On the contrary, I believe optimism, and cheerful philosophy and patience, will pull us through the times we now see. But, it will take the united effort of those who can think, and who are willing to act, to get the world on its feet again.

Time and space will allow me to mention only a few of the tendencies of the day.

#### THE NEWSPAPERS.

The power of the press is great. Newspapers are indispensable to an enlightened people. They do more than all else to educate the masses.

There never was a time, however, when conservatism, in the printing of news, was more needed than now.

Many things need silent treatment. A still greater number of things, which must be mentioned, should be treated with as little sensationalism as possible. Class hatred should not be stirred up by unfortunate publications. The appetite for the scandalous and the morbid, on the part of the public should not be pandered to.

Bad head lines do lots of damage. Some of our newspapers give great publicity to every meeting of extremists, or radicals, as if they represented something substantial. A handful of such men will meet, representing nobody but themselves. They will speak and pass rabid resolutions, and their views will be aired in the press, as if they were to be taken seriously.

Even the pulpit has been invaded by the appetite for the sensational. Every sermon, by some preachers, must be advertised as touching on some morbid subject.

What a boon it would be if we would run along naturally for a while. Let's farm, and trade, and manufacture, and work along in the old way, for a season, and see if all of us will not be happier, and really progress just as much.

The press, the pulpit, the lecture platform, and the theatres, ought to get together in an intelligent effort to get rid of these tendencies. It may be said that a healthier appetite on the part of the public would not demand such news, such sermons, and such shows. But, the quickest way to educate the public out of this appetite, is to cease to give it to them.

Of course, no law can reach such subjects. It is idle to pass laws regulating matters of judgment and taste. We ought to realize the power of suggestion, and that bad tendencies grow and thrive on publicity and advertising.

#### CRAZE FOR NEW LEGISLATION.

The craze for legislation needs to be curbed. Every legislature must pass some new law every day, overturning a fundamental principle.

Many eccentric men are elected to our legislatures, who have hobbies growing out of some strange personal experience, which obscures and prejudices the vision and makes them utterly useless so far as all common sense propositions go. Understand, of course, that such men are exceptional, but every legislature has some such members, who have more or less influence, and occasionally a legislature will meet which seems to have a large sprinkling of such men.

Men of this peculiar type look at a subject through the narrow glasses of self. I recall a farmer, in a certain county, who happened to have a bad check passed on him once,

in a small transaction. To show how our own affairs, unduly and unfairly impress us with their importance, this bad check changed the whole current of this man's life. It caused him to run for the legislature, on a platform which contained only one plank, and that plank was, that passing a bad check should be made a felony in all cases. He sent circulars over the entire county, in his race, and came very near being elected.

The best work that a legislature can do generally, is not to pass a single law. The matter of taxes, and of appropriations, and other routine matters, ought to be put in the hands of administrative bodies. Alabama is wise in having a legislature only once every four years.

#### DIVORCE.

The divorce courts are another instance which reflect the restless current of the times. These courts are crowded because husbands and wives have not the patience to stand the least friction. Neither will submit to any curtailment of liberty. At the first cross word, the matrimonial establishment is to be destroyed.

A morbid sentimentality seems to condone much of the crime that is sweeping over the world. Never have we had so many stringent laws, and never so much crime. The amount of crime seems to increase in direct proportion to the number of criminal laws passed.

#### FREE SPEECH.

Free speech is talked about a good deal. Free speech is all right within certain limitations, but there comes a time when it goes too far. A nation must ever be on the alert to see to what point free speech is leading it.

For many years England has been telling us that she has allowed free speech, and that she has always permitted the radicals to say in public whatever they pleased. She has frequently boasted that Hyde Park, where the soap-box orators perform, is an outlet for the views of all extremists, and that, by letting them have free rein, they ex-

haust themselves, and nobody pays attention to them. England must now realize that she made a mistake in going too far in this direction. Look at the situation she is in now, with labor and the triple alliance, and the threat to nationalize everything. This is the result of having had constantly preached into the masses, these dangerous doctrines in Hyde Park, and elsewhere, with nobody to answer them, or to educate the masses to the contrary. The time has come when we must realize that correct education for the masses is the salvation of the world.

What is there in the psychology of the present day, which makes us give serious ear to the vagaries which we should have laughed at in former days? Perhaps the great war has thrown us off balance. But I believe this tendency started before the war.

#### RECALL OF JUDGES AND DECISIONS.

A few years ago we would never have dreamed of such things as the initiative, the referendum, the recall of judges, and the recall of judicial decisions.

It is bad enough for a judge to be subject to recall at his regular election time, but to make him subject to recall every time he gives an unpopular decision, and to even make that decision subject to recall, amounts to having neither law nor government, and a man, under this condition of things, would have to submit to a vote of his neighbors, as to whether he could own his own home or not.

#### CRAZE FOR CONSTITUTIONAL AMENDMENTS AND FEDERAL LEGISLATION.

One of the tendencies of the day is that everybody must go to Washington, and to Congress, to get redress for every fancied wrong. Not only this, but they must remedy all grievances by amendments to the Federal Constitution.

If amendments to the Constitution keep up, that document will be so padded as to be unrecognizable in a generation. It will be robbed of the elasticity which has been its boast. It will cease to be the organic law,—the frame-work

of our institutions. It will cease to have the adaptable capacity, for all time, which we have been so proud of, and will become a mere mass of administrative details, and of eccentric dogma.

It is the duty of the lawyers to set the people right on this tendency to amend the Constitution, and to seek Federal legislation for all subjects.

There is even a movement on foot to put Sunday Blue Laws into the Federal Constitution. And, if they are not put into the Constitution, I suppose the White House will be picketed.

Twenty or thirty years ago, who would have thought that our people would have tolerated, for a moment, the picketing of the White House?

Or, who would have thought, for moment, that the prison authorities would be alarmed by a hunger strike; and that they would hasten to forcibly feed the hunger strikers, or else release them?

#### HAVE AMENDMENTS TO FEDERAL CONSTITUTION HELPED US?

The first ten amendments to the Federal Constitution were practically a part of the Constitution itself. They were agreed upon in the convention, and it was understood that they were to be afterwards adopted, at the first Congress, and that the States would ratify them.

They embody general principles, and are, in substance, a bill of rights.

But it is doubtful whether we have improved the situation by other amendments to the Constitution.

When our Constitution was adopted, the framers of it figured out the situation very wisely. They had no special axes to grind. They were in a calm frame of mind. They were undertaking to deal for the future. The people had not divided into classes to any great extent. Labor and capital were not at war. The only issue which confronted them to any extent was the issue made by the Federalists

on the one side, advocating a strong central government, led by Hamilton, and the States' Rights people on the other side.

When the Civil War closed, of course, it was inevitable that slavery itself should be abolished, and an amendment to that effect was to be expected. We, whose ancestors fought against that result, were obliged to bow to the arbitrament of the sword, and the abolition of slavery resulted.

But, the Fifteenth Amendment, which provides that the right to vote shall not be abridged on account of race, color, or previous condition of servitude, was a great mistake, and is so admitted by most people, north and south.

As to whether the amendment extending suffrage to women is a mistake, time will tell.

A large element has been added to the voters in woman suffrage. Many people feel that the presence of women at the polls will increase the tendency to overturn everything. This remains to be seen. Being a new element in politics, the women are being preached to by many so-called leaders, and are being urged to act as a class, as if they stood apart from society in general. These leaders are attempting to embark the women on various reform campaigns.

It is absurd to treat the women as having any interest different from the men. The rank and file of women, I believe, will look at things as men do. The tendency to want to do something new and startling will soon disappear, when women get accustomed to the ballot. Certainly the presence of the women cannot make things much worse than they have been in the last few years.

The amendment requiring that senators shall be elected by the people was a mistake, in my opinion, and time will show it.

Without going further into all amendments, after the first ten, it is doubtful whether they have, as a whole, helped the situation.

PROHIBITION AND SUFFRAGE AMENDMENTS SET  
DANGEROUS PRECEDENT.

The last two amendments (women suffrage and prohibition), confront us with a new situation. It is true that the Federal Constitution gives many guaranties. At the same time that Constitution, by giving three-fourths of the states the amending power, takes away substantially every right which one-fourth of the states may have. It has been practically held, of late, that there is no such thing as an unconstitutional amendment to the Constitution of the United States, if adopted in the regular way.

Such an amendment may take up the most alien subject imaginable to the general government, and make it a part of the organic law. If it conflicts with some of the fundamentals theretofore existing, the latter are repealed.

Each state is tied irrevocably to a two-thirds vote in Congress, and to a three-fourths vote of all of the states, for all purposes.

Like a run-a-way horse, three-fourths of the states may drag the minority states into a form of government, either monarchical, or socialistic. They could sweep us all into a titled aristocracy, or into rank anarchy. This, it seem to me, is the practical effect of the decision in Rhode Island against Palmer, 253rd U. S., page 350, in which the power to amend the United States Constitution, under Article 5, is practically held to be without limit whatever, except that no state, without its consent, shall be deprived of its equal suffrage in the Senate. Thus, any part of the Constitution may be repealed, and something else substituted. Anything may be added to it. Section 4, of Article 4, which guarantees to each state a republican form of government, may be repealed. Paragraph 7, of Section 9, of Article 1, which forbids the grant of titles of nobility, may be repealed.

STATES WILL ALWAYS BE OUR GREATEST AGENCIES  
OF GOVERNMENT.

The states will ever be the only satisfactory government

in most matters. The central government cannot administer their multitudinous affairs. Maine does not know what Texas wants. Georgia does not know what Oregon wants. Of course there are many matters common to us all, but we should seek uniformity by state action, rather than by congressional legislation.

Never did our forefathers of the South, when the government was formed, look more wisely into the future, than when they committed themselves to the saving of the sovereignty of the states.

Who would have imagined what the limited taxing powers, which appear in the Federal Constitution, would be construed to cover? Who, would ever have imagined that, under the interstate commerce clause, Congress can legislate for the protection of wild ducks, white slaves, or the prevention of social diseases? Such things seem matters for local regulation. A government which is as far from its people as Washington is from California can, by no possibility, be adaptable enough to suit the people, except in very limited matters.

When we put strong and wise men in control of our state governments, then the tendency to go to Washington for all legislation will cease.

Our states will always be the great repositories of governmental power. They touch us everywhere. From the moment we are born, down to the moment of death, when the probate court administers the estate, the state is our sovereign. Our lives, liberties, our homes are almost entirely in its keeping. From disorderly conduct down to murder, the state regulates our conduct. From the man with the small home to the multi-millionaire, we hold all our property under the states.

The aggregate of sovereignty possessed by all of the states, compared with Federal power, makes the latter dwarf into comparative insignificance.

Our great cities, with their complex powers, belong to the states. The taxing power of the state is limited only by

what it says in its Constitution. The state does not have to claim power, as does the Federal government, as a special grant under a constitution. All power belongs to the state which belongs to any sovereign, except in the few instances where it is given to the general government.

Look at the old days in Virginia, when John Marshall, then Chief Justice, and James Madison, and James Monroe, ex-presidents, went as delegates, and took part in the convention of 1830, which framed Virginia's constitution. Even in 1877 we sent our best men to make Georgia's Constitution. The states, in those days, enlisted the services of the strongest men. They must do it again.

#### RECENT DECISIONS RESTORE STATE'S RIGHTS.

Recent Federal Supreme Court decisions go far toward establishing our old ideas of state sovereignty again. We had all imagined that the due process of law clause in the Fourteenth Amendment to the Federal Constitution, circumscribed the powers of the states very much.

These decisions hold that there are few things that the state cannot regulate, and even destroy, under the police power. The state now is a sovereign with few checks on its power.

We who have been clamoring for state's rights, have had it heaped upon us in wholesale form. Never did we dream that the police power of the states would cover practically the whole field of industry, and of property and of personal liberty.

Public utilities have long been subject to it. Many other things of a *quasi* public nature have been held affected by a public interest, and subject to the police power. Recently the Supreme Court has held that the owner's right to contract for the rent of his own premises, with his tenant, is subject to the state's police power, even as to the amount of rent charged.

Under the recent decisions of the Supreme Court, various socialistic experiments have been made in North Dakota, which has embarked in banking, in grain elevators, and

in practically all of the big business of life. It is said in the public press that North Dakota is in a bad financial way with its experiments, as was to be expected.

Kansas has assumed equally as much authority as North Dakota, with its court of industrial relations, and with its operation of the mines of that state. But, Kansas seems to be making something of a success with the experiments made by her. At least she gets production, develops her resources, and seems to be keeping down the strikes which have become such a nuisance in this country in the last few years.

Still further in the direction of turning over greater political power to the states, was the recent decision of the Supreme Court, holding that Congress could not regulate primary elections under the Constitution.

The effect of these decisions is to turn over practically everything animate, and inanimate, worthless and valuable, to the state's police power, or to its taxing power, or to its political power.

Unless these great powers are wisely exercised, we will have chaos in this country. I, for one, am glad that our states have been turned back to us, in such large measure. It behooves us to put our best men in office in the state governments.

I do not mean to say that while these vast powers have been recognized as existing in the states, that Congress is not at the same time stretching all of its power to the utmost limit. We are regulated by the state, and by Congress, in taxes in property matters generally, in new-made crimes, until it makes a man's head swim to try to keep up with the situation.

It behooves a man in these days, to look well to what he does. Between regulations of property and liberty by the state, and regulations of property and liberty under the interstate commerce clause of the Federal Constitution, a considerable proportion of our acts are made criminal. The stretching of the interstate commerce clause to cover even child labor, white slavery, wild animals and birds,

would seem far enough, but I note in the public prints that Congress has passed a law authorizing one of the government departments to regulate interstate travel of any person affected with a social disease, and that such person must obtain a permit from a health officer before taking a trip out of the State, under heavy penalty. He can roam from one end of his own state to the other, at will, unless the state passes a similar law, but woe to him if he crosses the state line without a certificate.

#### SMALL CRIMINAL CASES SWAMP U. S. DISTRICT COURTS.

So many things have been made criminal by Congress, that the Federal district courts are filled with a mass of petty criminal litigation which absorbs the time of those courts, which should be given to more important matters.

Congress has fallen into the bad habit of authorizing various government departments to make regulations, the violation of which it denounces as a crime. Under this authority, numerous regulations of the treasury department, of the interior department, of the interstate commerce commission and other government bureaus, are made crimes.

It is remarkable that a free people will submit to such power in a mere department of the executive branch of the government.

A bureau head can legislate whatever he sees fit into a crime. The courts were wrong in ever holding that legislative power, at least the power to define a crime, could be thus delegated.

#### CLASS PREJUDICE.

Another thing which we must combat is the class consciousness which is beginning to develop itself. I feel that there is little room for class consciousness, as it is called, in any country where the opportunities given are as great as ours. Abraham Lincoln was a back-woods farmer boy. Andrew Johnson was a tailor. Charles M. Schwab, one of our foremost steel magnates, started out as a laborer. Instances of this sort could be multiplied.

The son of the man who works with his hands today, becomes tomorrow a banker, another a great scientist, another a merchant prince, and so on through the whole field of endeavor, which is open to all.

Men of this country do not stay for generations, in one occupation, such as shoemakers, bakers, carpenters, and the like, as they did in the countries of Europe.

It has frequently been said as to this country that men who perform manual labor, in its various phases, are usually only in a transitory state, and do not expect their children to remain there.

It is this feeling of equal opportunity which will prevent bolshevism from ever having much hold in this country.

But, in spite of all this, the influx of bad foreigners, the excessive organization of the various forms of labor, and the establishment of a class of labor leaders, who live because of these organizations, and because of their supposed usefulness in labor disputes,—has all tended to create a sort of class, who consider themselves as a thing apart from the general public, and who, by allowing their minds to focus upon their own situation, seem to have lost sight of everything but themselves.

The evils of this over-organization of labor, are apparent now in England, as I have said elsewhere in this address. No one questions the right of labor to organize. But, when labor takes the attitude that it is a privileged class, that it must be exempted from those laws regulating combinations, which apply to other people; that the law regulating injunctions must be modified for the special benefit of labor,—then it is time to call a halt.

#### REGULATION OF WEALTH.

The adjustment of great fortunes to modern conditions, is one of our great problems. That wealth must be regulated, as well as labor, there can be no doubt. Between the income tax, and the inheritance tax, the wealth of this country is beginning to bear its part of the common burden, and fewer swollen fortunes, and more equal distribution,

will probably result.

Wealth carries with it a great public obligation and trust. Most of the wealthy are beginning to realize this, and are acting accordingly. The institution of private property is here to stay. Its limitations and boundaries will, in time, be worked out, so as to give the greatest good to the greatest number, and so as to leave opportunity for all.

The general run of men who make large fortunes, are men of broad judgment, vision, and usefulness. They are generally developers. Here and there, however, is a man of great wealth, who is arrogant, selfish, and without public spirit, miserly, grinding on those dependent on him, and grasping in his trades. Such exceptions to the rule are great breeders of anarchy and socialism. Such men put many persons against the whole institution of private property. It is to be hoped that conspicuous examples of this sort will become rare.

The remedy, however, is not to attack the entire institution of private property, but to devise ways and means of reaching such unworthy individuals, if possible. Of course, under any system, there will always be some individuals who do not play the game fairly, and the generality of the rules will always enable such men to slip in with some advantage.

Men whose only avocation in life is the mere game of making money, are poor citizens, and hurt the state. Such men are dead to the duties of citizenship, and are a drag on humanity. Wise men realize that money isn't everything. In this day and time, a man of moderate means can see and enjoy more than a king could a century ago.

Combinations of wealth, to carry on great enterprises, and make developments, are necessary. As our government is now constituted, the element of politics makes it impossible for government to do these things. The question of adjusting these combinations of private property, and of properly regulating them, as regards the income and fortunes of individuals, is one of the great problems which our intelligence, and that of our children, must pa-

tiently work out. Evolution, and not revolution, will carry us through.

#### RUSSIA'S EXAMPLE.

The institution of private property, and indeed of every civil or political right, as we view it, has been challenged by soviet Russia, with a population of one hundred and eighty millions of people, with an area of about eight million square miles. For a while they have been going through the form of carrying on what they call a "soviet" government, which seems, at this time, to be a government by force of arms.

Encouraged by the example of Russia, the discontented, the envious, and many of the ignorant, in all countries, have made a general onslaught on government, have questioned every principle of organized society, as it exists to-day, have misled many people, and have generally created an atmosphere of uneasiness. But, we feel that, like the French Revolution, which even went so far as to change the calendar, the Russian situation will clear up, or at least be confined to that country.

With the destruction of scores of monarchies in Europe, and Asia, as a result of the great war, democracies have been forced upon numbers of people who are utterly unfitted for them.

Out of all this jumble of governmental experiments now going on, something useful may be evolved, even if it be but to show the folly of the experiments themselves.

Only by experience, and by long responsibility put upon people, do they become fitted for self-government. A people must not only be trained up in it, but they must have the right sort of education for it. They must learn the lessons of patience, deliberation, the faculty of investigating, and of weighing and balancing argument.

#### BOLSHEVISM WILL FAIL.

I feel that bolshevism will fail.

It is a foolish system, which, in order to prevent some

people from being prosperous and happy, would undertake to reduce all of us to a common level of misery and want.

Socialism, or any form of paternalism, breeds a stifling atmosphere. It imprisons energy and genius. It is rank tyranny. It reduces all to a common level. The swift, it pulls back. The laggard, it attempts to push ahead. It kills initiative; it destroys the incentive to work and accomplish something, by taking away the reward.

In the recent war, we have been given a taste of governmental interference by operating railroads, shipyards, and nearly everything else. We now know what to expect when government takes too great a hand in the affairs of its people.

Government regulation is all right. Wise regulations are necessary to accomplish, as near as possible, the just distribution of things, and of opportunities among the people. But, it is only fair to say that such experiments as we have made in direct government operation, have been extremely unsatisfactory, and have created favored, over-paid classes, have prevented development, have cramped industry, have limited production, have increased taxes, and hampered the individual.

#### A FORM OF GOVERNMENT ALONE CANNOT SAVE US.

To merely preach a sermon does no good, unless a remedy is pointed out. A diagnosis by a physician does not cure. There must be knowledge of the remedy for the disease.

It must be manifest that with universal suffrage, our form of government alone, with all of its checks and balances, and its constitutional guarantees, cannot save us. The remedy must go deeper. The people must save the situation, and for the people to save it, they must always be, or at least a majority of them, in the proper frame of mind.

In this day and time, when absolute despotisms have disappeared, a government reflects the hopes, desires, and aspirations of its people. The government is but a part of the organization which we call society. To estimate a

people, we merely include government as one of the things which go to make up the nation. Commerce, agriculture, the state of science, the enlightenment and daily life of the people, its government,—are all considered in determining whether a particular people are bringing out the best that is in humanity to the greatest number.

We sometimes lay too much stress upon the mere form of government. A government may be very poor in theory, but very good in administration. Some forms of government will suit one people, but not another. A government may be very perfect in theory, but very poor in actual administration. An absolute despotism may be a benevolent and progressive government. In its long history, the world has turned from first one form of government to another. A new government of any kind is usually good for a while, on the principle that a new broom sweeps clean.

One of our mistakes is to think that everything can be cured by law.

The happiness and progress of the world is a proposition which goes back of all government. True, however, without a government which permits expansion, and the full development of a people, there is a great handicap on progress.

A very bad government can, of course, ruin a people. A government which crushes liberty, destroys enterprise, hampers industry, levies oppressive taxes, may reduce the great mass of its citizens to poverty and misery. The constant struggle of a people must be towards a happy medium.

The edifice of government is like a house which has had many additions and changes made in it. Something has been added here, and something removed there, as necessity or expediency required. Most governments, which have lasted any length of time, are largely patch-work, but nevertheless are workable governments.

Governments are practical matters, and no mere theory can map out what a people will always need. Time and circumstance, which no gift of prophecy can foresee, are bound to bring changes. We feel our way in government

as a man does walking in the dark.

In our country, it is remarkable how many theories can be tried out, and still it survives. I sometimes almost feel we are fool-proof.

If a tree is known by its fruits, then the government, which our forefathers handed down to us, was the best in the world's history. In the short space of one hundred and forty years, we have peopled an entire continent of more than three million square miles. We have led the world in science and in invention. We are now the creditor nation of the world. We are the richest people on earth. We are today the most conservative people on earth, and our institutions are more stable, and there must surely be something superior and practical in any system which produces such results. We have given happiness, prosperity and opportunity to more people than was ever given before in the same time in the world's history. Our very success has inspired idealists and impractical people generally to think that perfection in government is attainable.

The organic law, the Constitution, is itself made by the same people, governed by the same impulses who compose our legislatures and make our laws. We cannot rest secure alone in a constitution.

He is shallow, indeed, who cannot see that it only requires a greater storm of public opinion to overturn a constitution than to overwhelm a legislature and pass a statute. The good of constitutions, and indeed of all checks and balances in government, is that they operate as a brake upon hasty public currents, by slowing up the wheel of legislation, by pronouncing legislative enactments void, and requiring the slow process of a constitutional change,— and thereby time is gained, and reason has opportunity to assert itself. Mob clamor is likely to subside. Only those fundamental changes are likely to be made which represent permanent views in the people.

It is thus to be seen that at last our only safety is a healthy public opinion which must finally control in all events.

**FEW LIMITATIONS ARE NOW RECOGNIZED BY THE  
COURTS ON LEGISLATIVE POWER.**

It is no longer safe to count on the courts to put any checks upon government, in regulating either property or liberty, under the due process of law clause, whether we consider it from the viewpoint of a check on Federal action, under the Fifth Amendment to the Federal Constitution, or of a check on state action, under the Fourteenth Amendment to the same constitution.

It being manifest that courts cannot, and will not try to save us, and that only conservative and sensible voters, and conservative and sensible legislators can save us,—is it not manifest that unless every intelligent and well-meaning individual appoints himself a committee of one to take an interest in public affairs, that we will land in a wilderness of legislative and economic folly, from which we may never emerge? Constitutional restraint, as to protection of property, liberty and life, having been so weakened as they have by recent decisions which give over practically everything to the police power, and to the taxing power, we should send the most responsible men to our legislatures, as well as to congress, for almost their only limit is the sky. We are in no worse position, however, than England which has no written constitution and France which is in practically the same condition. Having so few limitations upon the power of the legislature, this very fact should sober the legislators, and probably will.

**IT IS POSSIBLE FOR THE WORLD TO GO BACKWARD.**

When the brains and character of this country enter public affairs aggressively, and take over their full share of the responsibility, we will have a better country.

We all know that the world can slip backward. On several occasions, it has gone definitely backward. With the breaking up of the Roman Empire, came the darkness of the Middle Ages, which was a civilization below ancient Rome and Greece. We only began to be civilized again

with the advent of gunpowder and the printing press. Apparently these two forces are opposing principles and strange it is that they should act together in producing and extending civilization. One tears and destroys, as the mighty engine of war; the other spreads knowledge, uplifts the mind, and educates. But, it is the coupling together of those two forces in the same hand, that is, it is the fact that the powerful European nations have had them both from the beginning which has made them appear to go together, and produce civilization over the world.

So far as we know, the world has never suffered such a social cataclysm as to lose any of the accomplishments of science, or of art, or of mechanics. It is inconceivable that the achievements of steam, electricity, aviation, wireless telegraphy, should ever be lost. But, we can easily lose the heights of social order and justice which we have attained.

#### STANDARDS OF BAR SHOULD BE KEPT HIGH.

The bar is looked up to by the people for advice and leadership. Keep its standards of culture and character high. We have in Georgia a front door through which rigid examinations admit to the bar only those who appear proficient in law; while we have a back door by which law schools can shovel in, without limit, anyone who holds their diplomas. The law ought to go back of all examinations and diplomas, however, and should conduct a real investigation to see that the applicant has a general education, and sufficient mental cultivation, outside of mere legal knowledge, and also sufficient moral character, to be a member of the bar.

#### FUNDAMENTALS OF GOOD GOVERNMENT SHOULD BE UNDERSTOOD BY EVERYBODY.

One mistake which lawyers sometimes make, is to feel the fundamental principles in the Constitution are understood only by lawyers, and are safe only in the hands of the courts. To some extent, this is true but we should take the masses into our confidence.

Why should not legislators feel the weight of the or-

ganic laws as much as the courts? Why should not the people, themselves, the voters, feel the weight of these fundamental principles? All the agencies which control public opinion, the press, the platform, the bar, the pulpit, should unite to educate the public to an appreciation of our form of government, and to the preservation of fundamentals, and to sane conservatism.

It is never safe, as I have elsewhere said, to defer the conflict between hasty impulses on one side, and the principles of the Constitution on the other, until the courts are reached. The fight for the Constitution, and its permanent and fundamental principles, should be made all along the line. It should be made before the voters. It should be made before the legislature. It should be made before the executive. The courts should not be made to bear the whole responsibility. It is true they must bear it in the end, if no one else will.

It is a mistake to allow the public to feel about constitutional limitations that they are mere fetters which unreasonably bind the body politic. A healthy public opinion should give them effect ungrudgingly.

**RUSSIA, WITH ITS IGNORANCE, CONTRASTED WITH  
GERMANY, WITH ITS INTELLIGENCE.**

Experience shows that it is highly dangerous to any country to have, at the bottom of society, a very ignorant class. The present condition of Russia shows this. A high average of intelligence, a chance for every man of thrift to own his own home or farm, is the best permanent guaranty of stability and happiness to any country.

Russia lies by the side of Germany. The masses in Russia are almost wholly uneducated. The education in Germany has been general. Not only this, but by a long military establishment, Germany has been accustomed to discipline herself. Do not understand that by seeing the strong qualities of the Germans that I have any sympathy with their course in the late war, for I have none.

We see, as a result of the war, Russia in the throes of

sovietism,—whatever that may be. On the other hand, Germany, stricken by war, hemmed in by a ring of enemies, worked upon by the forces of bolshevism and anarchy from Russia has, because of the average intelligence of its citizens, and their patience and discipline, discarded the fanatical appeal of the foes of orderly government, and, in spite of crushing losses, seems to have a government of considerable stability.

Not only must the masses be educated, but they must be educated to the proposition that ours is a representative form of government, and not a pure democracy. The sooner all the people realize that those who are chosen because of their special fitness, should exercise the active functions of government, the better for us all. We must realize that there are many powers which cannot be exercised by the people en masse, but which are more wisely exercised when we delegate it to those specially chosen for the task. One of the great evils of the day is the tendency to make every office elective, from school trustees up. A popular concession once made, is hard to get rid of. We are facing such a situation in the election, by the people, of judges.

**INTELLIGENT AND RESPONSIBLE PEOPLE MUST  
TAKE PART IN PUBLIC AFFAIRS.**

Every gathering of intelligent men should be used to impress upon those present, as well as the public, that men of this kind propose to take a part in public affairs, that they propose to share their responsibility; that they do not propose to stand back longer and let the unfit, the untried, the opportunist, the mere politician, control the destinies of this nation.

As I have said, the case of Russia, and of the French Revolution, shows the danger of having dense ignorance in the lower ranks of the population. When such people, rise or when they first awake to the realization of their power, their ignorance makes them dangerous, especially under bad leaders, who always appear on such occasions. It gives them a tendency to overturn everything that is.

Well may we remember Dickens' words, in speaking of the guillotine of the French Revolution: "All the devouring and insatiate monsters imagined, since imagination could record itself, are fused in the one realization, guillotine. And yet, there is not in France, with its rich variety of soil and climate, a blade, a leaf, a root, a sprig, a pepper corn, which will grow to maturity under conditions more certain than those that have produced this horror. Crush humanity out of shape once more, under similar hammers, and it will twist itself into the same tortured forms. Sow the same seed of rapacious license and oppression over again, and it will surely yield the same fruit, according to its kind."

France learned its lesson. It has perhaps the most stable government in Europe today. She has become accustomed to liberty and self-government.

It is the average prosperity of the masses that makes a good country. The best counties in Georgia are not those in which a few large landowners own immense plantations, parcelled out to tenants, but are those counties in which there are many farmers of moderate means, who own their own farms, and who feel the responsibility around their own firesides of good government.

MASSES MUST BE EDUCATED,—DEEP SUPERSTITION,  
WHEN COUPLED WITH IGNORANCE IN MASSES  
IS A DANGEROUS SITUATION.

Ignorance is a great source of danger to the world, especially when coupled with superstition, or religious fanaticism.

Englishmen ruled India during the last century, and do now. The Hindus, the Mohammedans, and all other sects, submitted easily to the yoke of government by England in things temporal. They did not rebel against laws imposed upon them by the English. But, they had a superstition. The Hindus believed the cow was sacred. The Mohammedans believed that the hog was an unclean animal.

The English army furnished to its Hindu and Moham-

medan soldiers cartridges which were greased supposedly with either tallow from the beef, or grease from the pig. These cartridges, when made, had a receptacle for the powder which had to be bitten with the teeth in order to load the gun.

These men who did not object to a foreign government in the most material affairs of life, when they were compelled to touch the unclean meat of the hog, or the sacred meat of the cow, rose as one man, and history records one of its most fearful and bloody rebellions.

This instance shows that, while ignorant people may be for a long time tractable, that we are dealing with a powder house when we deal with ignorance. We do not know when we will run across some hidden wire, which leads to a dangerous explosive in the ignorant man's make-up.

Men in the lower ranks view government from strange angles. They look at it from the only contact which they have had with it. An ignorant foreigner, with a fruit stand, thinks all government is represented by the policeman on that beat; another, coming in contact with government only through a magistrate's court, in some petty litigation, will view the entire administration of justice from that angle; with still another, the tax collector stands for the government, and so on.

I repeat, therefore, it must be that the safety of the country is in the proper kind of education. If we are not safe when the people are enlightened, then we are lost. To argue otherwise, is to argue that humanity itself is a failure. Surely, no government can be safe simply because its people are ignorant, and will blindly follow a few. The day will come when bad leaders will get hold of them. Surely, a system which educates them properly, and which, by virtue of their own intelligence, enables them to come to the correct view, is the only safe plan. No longer is any country safe with a blindly ignorant understrata.

#### THE KIND OF EDUCATION NEEDED.

In considering the question of education, some of our

educators, especially some in the higher institutions, do not seem to have the right kind of education,—at least from my point of view. Some of them have been called parlor socialists. Some of them were draft obstructors in the late war, and some of them seem to have been inoculated with an idealism which approaches bolshevism. I can conceive of nothing worse than to have such visionaries teach the youth of this country, at the most impressionable age. Our educational institutions ought to look closely into the views of the faculties, and those who mould the minds of the men who will control this country. I am afraid that a good deal of our collegiate instruction turns out badly, just because of the presence of some such people.

In educating the masses up to the public responsibility, of course, it is necessary to moralize and teach, and get before them, by every means of publicity, what is right.

But mere moralizing alone does not influence people. Let them see that our system is the fairest in the world, and gives the best opportunity. Let the people of education and wealth be of such exalted character, and so willing to sacrifice themselves for the public good, that all of the people will strive to imitate their example.

The existence of successful men, who have come to the front by fair and just means, teaches the best lesson to the masses.

It should be our aim to teach every class of our children, especially in the public schools, to understand the principles of our government, what it means, the opportunity it gives, to hold up before them the lives of our great men, to show what we have accomplished, and we should, above all things, encourage patriotism, love of our country, rather than a cynical internationalism, although, of course, we must be broad enough to realize that there is a world beyond our borders.

#### THE MEN WHO FOUNDED OUR GOVERNMENT.

We are descended from men who have been free for nearly a thousand years. At least, since the great charter

in 1215, we have had a measure of freedom. Certainly for the centuries which have rolled by, since America was settled, we have had no master but ourselves.

Three thousand miles of ocean so loosened the bonds of government which held us to England, that we might well call our colonial days an era of free government.

Never did a people have such leaders as did this country in its founding. When we look at the immortal names of Washington, Jefferson, Hamilton, Madison, Jay, Patrick Henry, Marshall, and the giants of those days, whom providence seems to have raised for the purpose, we can readily understand how our scheme of self-government proved not to be one of visionary and idle dreams; how those practical men put the checks and balances to it that made it workable; how they looked at the lessons of history, and saw that a pure democracy could not accomplish what a representative government can accomplish.

No wonder that they were practical in devising a scheme of government. When we see how they peopled the wilderness, and when we look at the sturdy pioneers like Andrew Jackson, Sam Houston, Lewis and Clark, we can understand how they overcame a continent, for their courage was of the kind that neither seas, forests, nor deserts could check.

Never in the tide of time have such men, such a country, and such an opportunity met. The miracle of the ages was for men of this type to have the opportunity to settle and develop the vast country we inhabit. No pen has yet written in a manner worthy of their deeds, the epic of the men who settled this country. The stock, from which we spring, especially the pure American blood in the South, is a race to which self-government is second nature.

From such elements of our population there is every tendency towards safe and practical government. The natural instincts of such people are right. Their heredity is all in favor of our institutions. Not many of them can be led away long by false lights.

Gladstone said our constitution was as near a perfect

instrument as was ever struck off at one time by the hand of man. Realizing, as we do, that nothing human is perfect, let us go slow in changing a system which has served us so well.

#### REVOLUTION WAS FOREIGN WAR.

I have often thought that we were wrong in calling our war with England the "War of the Revolution". It was really a foreign war. Two centuries of separation, in time, and three thousand miles of ocean, in space, had made us a separate people from the English.

It was in no sense a class war, as many revolutions are. It was no turning of one part of the people against the other. There were no wild-eyed revolutionists in the American ranks. They had no hostility to government in general.

On the contrary, our leaders were the men who ruled the country. They were the landed and governing classes. They were not only land-holders, but, in the south, they were slave holders. They would not submit to any overseas masters, for they were masters of the vast dominion which surrounded them, compared with which England was small. Especially was the spirit of independence strong in the south. Some of the English parliamentary leaders thought that because of the church of England, which was strong in the south, the south would be slow in going into the revolution. But Burke wisely said that in the Southern Colonies, where slavery existed, England need expect no sympathy; that the spirit of liberty always burned strongest in those who were the masters of slaves; that it was their nature to dominate, not to obey.

It is true, that in the world's history, the most lasting reforms have been initiated, not from the bottom ranks of society, but from those near the top. Men who are accustomed to position and responsibility regard more jealously their rights than those who have been accustomed only to obey orders. Also they are more practical. They know the spots where change is needed.

The Barons, not the Common People, wrung the charter from King John, in 1215, at Runnimeade.

We never became a nation therefore by revolution, in the ordinary sense. We became a nation by gradual growth, by evolution and by separation. The same men ruled America after the Revolution who ruled it before.

They undertook to establish a representative government, one which abounded in checks and balances. Our leaders did not believe in a pure democracy. On the contrary, in most of the colonies there was no such thing as universal suffrage. Some had educational qualifications. Others had property qualifications.

In conclusion, let me say that the saving of our American heritage is worth every effort and sacrifice. All time-serving policies must be thrown to the winds; we must have the courage of our convictions. Already there are signs of a return to sane conservatism.

Possessing the richest and fairest part of the globe, having a population sobered by long self-government, and having behind us a record of achievements unparalleled in the world's history, there is every reason to believe that for centuries to come, we shall continue to be the inspiration of all who love justice, orderly government, liberty, as regulated by law, and a fair opportunity for all who prove themselves worthy.

## THE BENCH AS A SCHOOL OF LAW.

---

PAPER BY  
A. B. LOVETT,  
OF SAVANNAH.

---

The President of this Association, knowing of my long and varied judicial experience—extending, as it did, over a period of about eighteen months before I could be lawfully displaced—has influenced the Executive Committee to place me on the program for an address upon the subject, "The Bench as a School of Law," thereby placing me in a position to demonstrate that even a committee of lawyers possessing most discriminating judgment, when subjected to the tyranny of their chief executive officer, may do an obviously ridiculous thing.

At the outset, let me say that the subject assigned to me is too limited in its scope. The bench is not always a school of law, but it is always a school. There are many things that a lawyer temporarily occupying the bench will learn besides law; and fortunate indeed is he who has a bar in his circuit of such a character that law may be learned also. With a good bar he may learn much. With a bad bar he may forget even that which he knew.

Among the first things that a country lawyer learns on ascending the bench is that he is much more important than he ever dared dream himself to be. MacGregor-like, he sits at the head of a table, is given a fresh napkin with every meal, and occupies, to the exclusion of all others, the room with a southern exposure and a private bath, if one there be.

On calling the docket at his first court, he will learn that the hearing of the majority of the profession has become impaired, and that he must call each case twice,

because the universal custom is to inquire, "What case was that which your honor called last?"

He also soon learns that his former opponents at the bar who perhaps showed him but scant respect and no mercy at all in the active practice, can be the most deferential and obsequious in his court, and when court has adjourned, can freely explain to their clients, both actual and prospective, how little law the judge really knows, and how his appointment or election was due to a political fluke. These mannerisms and criticisms do not affect him, however, for he knows that the same lawyers are his true and loyal friends, and while freely criticising themselves, will tolerate criticism from no other source.

After a few months upon the bench, the judge discovers that a novel point of law has been presented to him for decision. He consults all the law books cited, and ferrets out others, reads the briefs submitted, plagiarizes from them freely and then proceeds to write a learned opinion treating the case as one of first impression, and, after filing the opinion, indulges in the vain hope that his legal attainments may be recognized by the appellate court and that his decision will be adopted as their own, thus preserving by the printed word a leading case for his posterity. Some months later he is shocked to find that his decision was reversed in a short syllabus by the court because the verdict was without evidence to support it and that he erred in refusing a new trial.

Every lawyer should be a judge. By the same token, conversely, every judge should be a lawyer. Some are, and some are—but that is beside the point, and is not the subject that has been assigned to me.

A lawyer's duties are essentially judicial. On first contact with his client, when the case is stated, he is called upon to perform judicial functions. If sufficient criteria are furnished, his mind quickly forms some conclusion—tentative it is true, often subject to modification or reversal by himself, and too often found to be unsound by someone

duly authorized to tell him that he is wrong, and make him accept it whether he agree or not. Therefore, judicial experience at least has this valuable result:—it enables the lawyer to get the point of view of the judge, and even though we are inclined to think that many of them see as through a glass darkly, the judicial point of view is not to be ignored.

As lawyers we should not object to developing judicial disposition, if not carried too far. If we will stop short of the point where the active practitioner ceases to be the partisan and becomes wholly the arbiter, judicial experience will prove a gain rather than a loss.

To add one thing more to the sum total of their knowledge should not be objectionable to the members of our profession. They are supposed to know everything. Did you ever consider how versatile a lawyer must be? He must know the moral law, of which Dr. Pound spoke here last year, and of which many of us had never heard before. He must know the informal social law, of which judge Sibley so interestingly, and with such success to himself, spoke two years ago. He must know philosophy, psychology, sociology, theology, and perhaps yet may be called upon to explain, in his usual erudite manner, the principles underlying the doctrine of relativity. I maintain that it can do him no harm to read Cann's instructions to juries, or to consider the processes of the judicial mind while not in a static condition.

Many and varying methods, in different countries, are used to train lawyers. We all know that in Great Britain every member of the bar must be called or certified by one of the four Inns of Court. To register at an Inn, the student must have "acquired a suitable acquaintance with Latin, a decent familiarity with the English language, and some knowledge of the history of his own country." He must keep twelve terms, covering at least three years. The keeping of a term is the eating during that term, of six dinners in the banqueting hall of the Inn. Before being

called to the bar, the applicant must arm himself with the examiner's certificate of competency and the butler's certificate of dinners successfully achieved. In Germany there is not the distinction between the advocate and the solicitor that prevails in England. The distinctive feature of the training of the advocate lies in the fact that up to a certain point that training is equally applicable to an advocate and to a member of the public magistracy. At a point in his career, the student finds two lines diverging, and, accordingly he follows the one or the other, and finds himself a fully qualified advocate, or a person eligible for judicial appointment. A course of law at a university (and, in the main, a German university) for three years is a condition of examination for the bar, and after successful examination, three more years must be spent in attendance at the courts of law. Finally, the fullgrown advocate must elect as to his professional domicile and to what court he will attach himself. In France, the production of a diploma granted by a French university is indispensable for admission to the court. The student must have passed not less than three years in pupillage. The admission of the advocate is by entry on the roll after proof of the foregoing has been furnished.

In America, two methods of preparation for the bar have been chiefly used—the law school and private study. To these in recent years has been added a third—the correspondence schools. No particular period of study is required of the applicant for the bar examination. His ability to answer the required number of questions prepared by the bar examiners (excluding the statutory qualification that he or she be a citizen and of good moral character) is the sole requirement to become a member of the bar in Georgia. And it may or may not be significant that the law in this State does not expressly provide that any tribunal shall pass upon the moral character of the applicant. Democratic methods (equal opportunities) are held to be very sacred, and it is not likely that any early changes will

be made in our system. But that it, like all others, has its defects, no one will deny. I knew a young man in my old home town who took the correspondence course a few years ago, and in due season, through the generosity of the examiners, was admitted to practice. His office was opened, but the clients came not. He said to me one afternoon, somewhat pessimistically, "I shall keep my office open until Saturday. If I don't get a client by that time, I shall go back to selling automobiles. It requires more ability, produces more revenue, and excites more interest. In fact, I find that there is nothing to the law; I am really sorry I ever learned it."

Some of these defects can be overcome by requiring a lawyer to serve an apprenticeship as a judge. Of course, it may be suggested that the rights of the litigants are of more importance, but that is also a subject that has not been assigned to me for discussion. As compensated at present, particularly in the rural circuits in Georgia, only a very young and impecunious or a very old and opulent lawyer can afford to hold judicial positions. As between the two, I believe you will agree that the former are more amenable to reason. The latter usually at sometime in his experience has tried a case involving the same point as that you have under consideration, and his mind cannot be shaken, although upon analysis it may turn out that judge's case involved a defeasible fee simple title to land, while your case related to the doctrine of last clear chance.

But aside from these considerations, judicial experience, if persisted in, first will color and finally will control the lawyer's conception of his relation to the court and to the community. He will find himself impressed with two prominent ennobling ideas, worthy of constant remembrance by every member of our profession, the first being that the true lawyer, while an attorney, is more than that. He is also a minister of justice. And, secondly, that he is not the counsel of individuals exclusively, but that his activities affect the entire community life.

Before this Association a few years ago, one of Georgia's most distinguished lawyers, since that time Solicitor General of the United States and now Judge of the Court of Appeals of the United States for the Fifth Circuit, took occasion to deny emphatically that any man or woman had a *right* to admission to the bar. The thought advanced was that the profession of law stands in an entirely different relation to society from any other vocation. Whether or not any person shall be admitted to the bar to practice law depends solely on the idea that the introduction of lawyers, and their admission to the practice of law, makes for the conduct of justice—makes for the better administration of justice. The institution of practicing attorneys is ancient and honorable but it was inaugurated as one of the agencies for the administration of justice. The theory of the Anglo-Saxon administration of justice is that it shall be administered through a tribunal before which one side is advocated and the other is defended, and the tribunal sums it up and finds the truth. That is our theory of the administration of justice. If it could be demonstrated that you could administer justice better by turning every lawyer out and having the court and jury proceed without them, then it would be the duty of the legislature to abolish our profession.

We all believe in, and admire, the system. But it is easy to forget, in the heat of an active contest, that after all we are a part of the judicial department of our Government, are officers of its courts and that our obligations to our clients do not change our relation to the judge and to the jury. Absolute loyalty to the interests of the client, and zealous, partisan and enthusiastic advocacy of his cause, do not require or justify a lack of loyalty to the cause of justice, a disregard for the dignity of our laws, or disrespect for constituted authority. It lies within the power of our profession to convince the public, by our conduct in the courts, that the American judicial system is fundamentally right, that it is the best method that can be devised for

settling disputed issues, or asserting legal rights. When this has been done, the modern, so-called, simplifying and time-saving bureaus, committees and commissions, which with their dangerous innovations in practice and procedure are in part displacing the judiciary, will disappear as if by magic, and the courts again will flourish in their pristine power, the judicial functions of which they have been deprived will be restored to them, because they ought never to have been taken away, and the world will know and acknowledge that courts are truly places where justice is judicially administered.

As to the relation of the lawyer to the community life, and in support of the statement that he is not the representative of his client exclusively, Amercia's most distinguished private citizen said in an address before the American Bar Association a few years ago:

"Our duty is a much larger thing than the mere advice of private clients. In every deliberate struggle for law, we ought to be the guides, not too critical and unwilling, not too tenacious of the familiar technicalities in which we have been schooled, not too much in love with precedent, and the easy maxims which have saved us the trouble of thinking, but ready to give expert disinterested advice to those who purpose progress and the readjustment of the frontiers of justice.

"You cannot but have marked the recent changes in the relations of lawyers to affairs in this country; and, if you feel as I do about the great profession to which we belong, you cannot but have been made uneasy by the change. A new type of lawyer has been created, and that new type has come to be the prevailing type. Lawyers have been sucked into the maelstrom of the new business system of the country. That system is highly technical and highly specialized. It is divided into distinct sections and provinces, each with particular legal problems of its own. Lawyers, therefore, everywhere that business has thickened and had a large development, have become experts in some special technical

field. They do not practice law. They do not handle the general, miscellaneous interests of society. They do not concern themselves with the universal aspects of society.

"And so society has lost something or is losing it—something which it is very serious to lose in an age of law, when society depends more than ever before upon the law-giver and the courts for its structural steel, the harmony and coördination of its parts, its convenience, its permanency and its facility. In gaining new functions, in being drawn into modern business instead of standing outside of it, in becoming identified with particular interests instead of holding aloof and impartially advising all interests, the lawyer has lost his old function, is looked askance at in politics, must disavow special engagements if he would have his counsel heeded in matters of common concern. Society has suffered a corresponding loss—at least American society has. It has lost its one-time feeling for law as the basis of its peace, its progress, its prosperity.

"The lawyer may plead the new organization of politics, which seems to exclude all counsel except that of party success and personal control; he may argue that questions have changed, have drifted away from his field, and that his advice is no longer asked; but, whatever his explanation or excuse, the fact is the same. He does not play the part he used to play; he does not show the spirit in the affairs he used to show. He does not do what he ought to do.

"Some radical changes we must make in our law and practice. Some reconstructions we must push forward which a new age and new circumstance impose upon us. But we can do it all in calm and sober fashion like statesmen and patriots. Let us do it also like lawyers. Let us lend a hand to make the structure symmetrical, well proportioned, solid, perfect. Let no future generation have cause to accuse us of having stood aloof, indifferent, half hostile, or having impeded the realization of right. Let us make sure that liberty shall never repudiate us as its friends and guides. We are the servants of society, the bond servants of justice."

## SUNDAY LEGISLATION.

---

PAPER BY  
ROBERT M. ARNOLD,  
OF COLUMBUS.

---

### SUBJECT TIMELY

At the present time there is in the United States a national movement of considerable force directed toward the establishment of stricter Sunday laws by both State and Federal legislation. No less than thirty-five state legislatures, in addition to the national Congress, will have been approached before the present year expires with a demand for the enactment of some form of laws further limiting either the carrying on of ordinary business, the operation of trains, the opening of post-offices, the publishing and circulation of newspapers, or the participation in certain sports and amusements, on Sunday. The persistent agitation for the enactment of these so-called "Blue Sunday Laws" has provoked widespread discussion and apparently has caused a nation-wide interest in this character of legislation. Consequently, on account of the general interest manifested in this subject, it is thought that a brief discussion of the history and legal aspects of Sunday laws is opportune.

### HISTORY—RELIGIOUS

The history of Sunday laws is traceable to the Sabbath observance of the ancient Hebrews. In the Hebrew language the word, "Sabbath" means "to cease," and came to be applied to a religious institution of the Jews establishing the seventh day of the Hebrew week as a holy day of rest, rejoicing and feasting. It is said by some that the institution of the Sabbath was established by Moses when he handed down the Ten Commandments from Mount Sinai.

However, the majority of historians and theologians agree that the Sabbath is associated with the "old traditions of theocratic religion which are found embalmed in the first chapter of Genesis." Writers of sacred history point out that the story of the creation, in which God is said to have made the world in six days and rested on the seventh, embodies a tradition much earlier than the period of Mosaic legislation; that Abraham and Isaac chose certain days for rest, meditation, prayer, and sacrifice to God; and that there are several intimations in the patriarchal age that there was a general custom to rest and worship on one day out of seven. However this may be, it is true that the Sabbath of the Jews is an ancient institution celebrated on the seventh day of the week, at which time the people were called together "to reflect upon the fact that the whole universe, including themselves, had originated in one personal and Supreme Being; that He had exerted His omnipotence for a definite period and then had ceased from His work. They were constantly to remind themselves of the work of God, once for all completed, by their own six day's round of labor; and as God had rested from His work, so were they to rest from theirs and to turn their thoughts towards Jehovah." As finally developed by the Jews, the Sabbath was celebrated as a day of rest in commemoration of the finished task of creation, and as a day of rejoicing and feasting in commemoration of the great providential deliverance of the children of Israel from the land of Egypt.

The government of the ancient Jews was that of a theocracy, under which a code of laws was developed that prohibited all manner of servile work on the Sabbath day. A violation of these laws was considered a profanation of the day and was punishable with death. Gathering sticks, lighting a fire for the purpose of cooking, treading wine presses, plucking corn, healing a sick man, walking of a cured patient bearing his bed, setting a broken bone and poulticing a dislocated joint, are typical examples of what

the Jews regarded as a profanation of their holy day. Hebrew armies never proceeded on their march on the Sabbath day. At one time their armies would not even fight on the Sabbath and their enemies taking advantage of this fact, frequently attacked and annihilated them. Later, however, they came to regard resisting an attack on the Sabbath as not a profanation, but they never marched nor made an assault on that day.

With the coming of Christ and of the Christian era, the Christian Sabbath was established and the first day of the week, called the "Lord's Day," was set apart for its observance in commemoration of the resurrection. Until this time the only people who had a Sabbath were the Jews. The Christians had none but desired one. They believed that they could not accept the Jewish Sabbath, as the law was not given to them by Moses, but only to the people whom he led from Egypt—the House of Israel. Unwilling to adopt the seventh day Sabbath of the Jews, the Christians, either by custom or common consent, chose the first day of the week, sanctified it, set it apart as a holy day of rest and spent it in prayer, preaching, the breaking of bread, and in general religious worship.

It is contended by some that Jesus Christ, during his sojourn in the world abolished the old Mosaic laws concerning Sabbath observance. They quote as their authority the reply of Jesus to the critics of his work on the Sabbath when he said: "The Sabbath was made for man and not man for the Sabbath," and also the question he asked in connection with works of charity and necessity: "Is it lawful to do good on the Sabbath days, or to do evil?" Without discussing the merits of the controversy as to whether there was an abolition by Jesus of the Sabbatical code of the Jews, it is true that under the laws of the Jews all manner of servile work was prohibited on the Sabbath day, while it seems that under the Christian code an exception was made as to works of charity and necessity.

Since the time of the ancient Jews and early Christians, many succeeding religious sects have borrowed the idea of a

Sabbath. At the present time practically all religions provide for such an institution. Various days have been chosen for its observance and it is said that somewhere in the world, the Sabbath, or an institution corresponding to it, is celebrated on each day of the week. For instance, the Moham-medans observe Friday and we have already noted that the orthodox Jews celebrate Saturday as their Sabbath and the Christians, Sunday. In the United States, where all religions are tolerated and protected, bitter controversies have arisen between contending religious denominations concerning the day upon which the Sabbath should be observed. Attention is called to this fact for the reason, as we shall see later in this paper, that these controversies had considerable influence upon our Sunday laws and upon the decisions of our courts respecting Sunday legislation.

It is hardly necessary to discuss the manner of celebrating, and the religious regulations governing the observance of the Sabbath by present day churches. There are as many different sets of religious Sabbath rules as there are religious sects. Some require their adherents only to attend divine services and permit them to spend the remainder of the day as they may choose. All require that the day be kept holy. Attendance at church, prayer, and religious meditation on Sunday are exacted. Most creeds provide against all worldly amusements and all work not necessary or charitable. Under our institutions and form of government these religious rules cannot be enforced by civil authority. As a matter of fact, the churches themselves are limited within very narrow bounds as to the punishment they may impose for violation of their Sabbath rules. Most churches, however, attempt to impose no punishment whatsoever, preferring to secure obedience by appealing to the consciences of their communicants.

#### HISTORY—CIVIL

We turn now to a consideration of the civil institutions of an enforced day of rest from work and labor and find that it was established during the early centuries of the Christian era. The first civil law, or edict, commanding the

observance of Sunday as a day of rest was proclaimed by the Roman Emperor, Constantine, in the year 321. This edict is generally referred to as the first Sunday law. One version of the text reads as follows:

"That all judges, people of the cities and artificers rest on the venerable day of the Sun; but husbandmen may labor freely, and at pleasure, at the work of the fields, as it often happens that the sowing of corn and planting of vines cannot be so advantageously performed on another day, lest, by neglect of opportunity, the bounty granted by Divine foresight be lost."

In order that we may get some idea of the legislation preceding our present American Sunday laws, the substance of a few typical statutes succeeding the first enactment by Constantine will be given: When the Roman Empire passed away and the office of Pontifex Maximus, once held by the Emperor at Rome, was claimed by the Bishop of Rome, Sunday observance was enforced by ecclesiastical law as well as by civil law. Consequently, succeeding Sunday statutes were promulgated in many ways—by decrees of Councils, of Popes, of Emperors, of Kings and by legislative departments of governing bodies.

In 789, Charlemagne promulgated a law that all should abstain from servile work and farm work on Sunday, such as cultivating vineyards, working in stores, attending court, hunting, sewing of garments, and working of embroidery. In 829, at the sixth Council of Paris, it was stated that a custom had grown up among Christians, as a matter of religious observance, to honor Sunday as a holy day in memory of the Lord's resurrection and inasmuch as the people were falling away from this custom, the priests were ordered to see that the day was devoutly observed and that there were no markets or courts held or farm work done. At this Council it was told how the assembled fathers had with their own eyes seen people who were engaged in farm work on Sunday struck dead by lightning and others inflicted with constriction of muscles. In 1050, at a Council in Spain, it was decreed that Christians should go to church

Saturday evening and Sunday morning and should do no servile work nor travel, except to a church, or to a funeral, or to visit the sick, or on public business, or in case of an assault by the Saracens.

The regulation of Sunday conduct attracted the attention of the English authorities at a very early period. Among the laws of King Ina, the Anglo-Saxon, promulgated about 692, is found a provision that if any slave works on Sunday by his master's order, he shall be free, and the master shall be fined; but if he work of his own volition, the slave shall be chastised or fined; if a freeman works without his lord's order, he must either be reduced to slavery or fined. By the laws that obtained in England during the Saxon Monarchy, up to the time of Edward the Confessor, abstention from marketing on Sunday and from popular meetings was enforced under penalty of fine. Equally strict was the Sunday legislation which followed the Norman Conquest. The medieval Sunday laws in England were but the extension of the Saxon laws. In England, under the Puritan influence, attempts were made to bring about a very severe observance of Sunday. The Puritans attempted to force, in addition to the restrictions on work and labor, an inhibition of all games and sports on Sunday. To counteract this, Charles the First republished an injunction issued by his father, James the First, in which he declared:

" \* \* \* that after the end of divine service our good people be not disturbed \* \* \* from any lawful recreation, such as dancing, either men or women; archery, leaping, vaulting, or any other harmless recreation and other sports, so as the same may be had in due and convenient time without impediment or neglect of divine service."

The first Sunday law enacted in America was in Virginia in 1610 and provided as follows:

"Every man and woman shall repair in the morning to the divine service and sermons preached upon the Sabbath day, and in the afternoon to divine service and catechising, upon pain for the first fault to lose their provision and

allowance for the whole week following; for the second, to lose the said allowance and also be whipped; and for the third, to suffer death."

In the early part of the seventeenth century, a number of dissenters, principally Puritans, fled from England to America and settled in New England. It was thus that Puritanism was established in America. The theocracy of the Hebrews furnished the model after which their government was constituted, and the pattern after which their Sunday laws were fashioned. Their idea of Sunday is summed up in the enactment of June 10, 1650, passed by the Plymouth General Court:

"Whosoever shall profane the Lord's Day by doing any servile work or any such like abuses, shall forfeit for every such default ten shillings or be whipped."

An examination of the Sabbath laws during the colonial period in American history shows considerable severity in what was prohibited on the Lord's Day and in the penalty inflicted. All servile work, unnecessary traveling, sports and recreations were prohibited. Most of the laws contained an exception as to works of charity and necessity. In case of a violation of the Sunday laws a fine was imposed, or the offender severely whipped. If, however, "there was clear and satisfying evidence that the profanation was proudly, presumptuously, and with a high hand committed against the known command and authority of God, such a person, because he despised and reproached the Lord, was put to death in order that others might fear and shun such rebellious courses." In 1676, the Act of Charles II was passed and became the law of the American colonies up to the time of the Revolution and furnished the basis of present American Sunday laws. This statute provided in part:

" \* \* \* that no tradesman, artificer, workman, or other person whatsoever shall do or exercise any worldly labor or business, or work of the ordinary callings upon the Lord's Day, or any part thereof; (works of necessity and charity only excepted.) \* \* \* "

After the foundation of our government Sunday laws

were among the first to be enacted by the several states. These laws followed very largely those of the colonial period and show the influence of Puritanism. Many of them still stand unrepealed upon the statute books of the various states. Generally speaking, however, present laws governing Sunday activities represent a departure from the severity and harshness of earlier legislation. In fact, at the present time, some states have no Sunday laws at all.

#### PRESENT STATE OF LAWS

The subject of Sunday legislation is almost entirely under the control of the various states. Federal statutes on the subject prohibit the opening of certain classes of post-offices on Sunday; provide extra pay for certain government employees who are required to work on Sunday; prohibit unnecessary work by crews of ships on Sunday while in harbor; and provide that no studies shall be required on Sunday by students in the military and naval academies. Although for many years Congress has been requested, petitioned and memorialized to pass national laws further restricting activities on Sunday, yet it has refused to go any further than to enact the laws above referred to.

The laws of nearly all of the states provide against work and business on Sunday which are in their character purely commercial. However, under exceptions as to works of necessity, such businesses as hotels, restaurants, drug-stores, and soft drink establishments, are allowed to operate on Sunday. Likewise, garages and other incidental necessities connected with Sunday travel are permitted to operate.

The laws governing sports range all the way from complete freedom to the severest kinds of restrictions. In Arizona, New Mexico, Oregon and California, practically full freedom of play is allowed; while in New Jersey, "shooting, fishing, sporting, hunting, gunning, racing, interludes, dancing, singing, fiddling, or other music for the sake of merriment; foot-ball, nine-pins, or any other kind of playing, sports, pastimes or diversions," are prohibited. A large majority of the states prohibit fishing on Sunday. The

majority of them make it illegal to carry or discharge firearms on the first day of the week. Professional baseball is very largely permitted, particularly in states containing large industrial centers. In Alabama, golf, tennis and dominos are specifically prohibited.

The controversy between the various religious sects regarding the day upon which the Sabbath should be observed is reflected in our present laws by the fact that many of them provide that such regulations shall not apply to adherents of religious beliefs who observe a weekly rest-day other than Sunday.

Enough has been said of the rules governing the religious observance of the Sabbath and of the regulations governing the civil institution of an enforced day of rest to demonstrate that the latter was either an outgrowth of, or was borrowed from, the former; that at least in their origin, both were established for a purpose purely religious; that in neither was the day designed originally as one of gloom but as one of rejoicing, to be spent in prayer, praise and worship; that both prohibit work and amusements on a certain day; that as finally developed, both make an exception of works of charity and necessity; and that the severities, particularly with reference to amusements, found in the comparatively modern rules of both institutions, can be attributed very largely to the influence of the Puritans.

#### SUNDAY LAWS AND THE COURTS

Keeping this comparison in mind, we now pass to a consideration of the legal phases of Sunday legislation as found in the decisions of our courts. A complete discussion of this subject would include such a variety of aspects that it is deemed expedient for the purposes of this paper to limit the treatment to a consideration of the constitutionality of the penal statutes governing Sunday work and amusement. As a matter of fact, the chief attack upon all Sunday laws has been aimed at their constitutionality and the manner in which this subject has been treated by the courts forms a most curious and entertaining chapter of our constitutional

history. The objections advanced against the validity of such laws will be first considered, followed by a discussion of the principles upon which they are upheld.

Those who deny the constitutionality of Sunday laws claim that they constitute: (1) an infringement of religious liberty (2) an unwarranted interference with the rights of property; and (3) an illegal restriction of personal liberty.

The Constitution of the United States forbids Congress from making any laws respecting an establishment of religion or prohibiting the free exercise thereof. But inasmuch as this is an inhibition to Congress only, the governing power over religion is left to the states. The various state Constitutions contain many sorts of provisions respecting religion, yet all of them have stipulations guaranteeing perfect equality before the law of all shades of religious beliefs. Construing Sunday laws with reference to these constitutional provisions, it has been contended that restriction of work and amusement on Sunday is a violation of the guaranty of complete religious freedom. Adherents of religious sects to whom Sunday is not a holy day, have frequently brought these laws before the courts, claiming that they prevent the free exercise of religious liberty, in that they establish a preference of one kind of religion over another, while oppressing others; prescribe a mode of keeping the Sabbath; and impose obligations upon the consciences of men in matters of opinion. In a California case (9 Cal. 502; later over-ruled) sustaining these contentions, it was said:

"In a community composed of persons of various religious denominations, having different days of worship, each considering his own as sacred from secular employment, all being equally considered and protected under the Constitution, a law is passed which in effect recognizes the sacred character of one of these days, by compelling all others to abstain from secular employment, which is precisely one of the modes in which its observance is manifested, and required by the creed of that sect to which it belongs as a Sabbath. Is not this a discrimination in favor of the one?

Does it require more than an appeal to one's common sense to decide that this is a preference? And when the Jew or Seventh Day Christian complains of this, is it any answer to say, 'Your conscience is not constrained, you are not compelled to worship or to perform religious rights' on that day, nor forbidden to keep holy the day which you esteem as the Sabbath?' We think not, however, high the authority which decides otherwise \* \* \* \* when our liberties were acquired, our Republican form of government adopted, and our Constitution framed, we deemed that we had attained not only toleration but religious liberty in its largest sense—a complete separation between church and state and a perfect equality without distinction between all religious sects \* \* \* The truth is, however much it may be disguised, that this one day of rest is a purely religious idea."

Among the guaranties found in both State and Federal Constitutions are the rights respecting property. It is said that the right to acquire property is just as inviolable as the right to own property, and that a day of rest enforced by civil law is an unwarranted deprivation of this right. While admitting that freedom in matters pertaining to the acquisition of property is not unrestricted, opponents of Sunday laws contend that before such liberty can be limited there must be some urgent necessity therefor. They deny that an enforced day of idleness is necessary to the public welfare or to the peace and safety of society, for the reason that no harm can result to the public at large from the pursuit of ordinary legitimate business on Sunday. In commenting on this phase of Sunday legislation, the Court, in the California case above referred to, said:

"It is the settled doctrine of this court to enforce every provision of the Constitution in favor of the rights reserved to the citizen against a usurpation of power in any question whatsoever; and although in a doubtful case we yield to the authority of the Legislature, yet upon the question before us, we are constrained to declare that, in our opinion, the act in question is in conflict with the first section of article first of the Constitution, because, without necessity, it infringes upon the liberty of the citizen, by restraining his right to acquire property \* \* \* The right to protect

and possess property is not more clearly protected by the Constitution than the right to acquire. The right to acquire must include the right to use the proper means to attain the end. The right itself would be impotent without the power to use its necessary incidents. The Legislature, therefore, cannot prohibit the proper use of the means of acquiring property except the peace and safety of the State require it."

In national and State constitutions, personal liberty is recognized and protected. Those who deny the constitutionality of Sunday laws claim that legal limitations imposed upon work and amusements on a particular day create restrictions of personal conduct not contemplated either by the Federal Constitution or by those of the several States. As in the case of property restrictions, opponents of Sunday laws admit that personal liberty is not an unrestricted right and that it can be limited when the public welfare so demands. However, they claim that when the liberty of individuals, in the conduct of business and in the enjoyment of amusements, not wrong in themselves, is circumscribed by civil enactment, such legislation constitutes an illegal limitation upon personal conduct, because there is no social or physical necessity therefor. Mr. Ringgold, in his "The Law of Sunday," page 98, makes the following comment on the social reason for Sunday laws:

"Those who uphold them (Sunday laws) as aids to religion must prove that spiritual betterment is likely to result from a general abstinence once a week, under legal compulsion, from play as well as from work; and no less must those who are sticklers for them, on mere social grounds, demonstrate that the community is advantaged by having its members compelled against their will to refrain once a week from all attempts to amuse themselves, as well as from all attempts to earn a living. The cheerless and idle Sunday is before the tribunal of reason; and, on this subject, we cannot do better than quote the following extract from a writer of singular clearness in thought and felicity in expression. \* \* \* 'How small a part of the great bulk of the people have either inclination or ability to employ the weekly returns of Sabbatical idleness in reli-

gious exercises or meditation! Look around those high orders of men, whose situations and circumstances afford them the greatest share of leisure time; and though they, for the most part, have had the greater advantage of liberal education, how few of them employ their leisure to any valuable purpose; and how many abuse it, to their own and others' detriment! Who, then, can think it possible that the uninformed minds of the illiterate and ignorant can wisely and virtuously spend one-seventh part of their lives in idleness, or, rather that great numbers of them should not mis-spend it, as we find they do, to the corruption of their own morals and the insecurity and annoyance of society in general?"

In like manner the argument is advanced that there is no physical necessity for a weekly day of rest. Mr. Ringgold, in his book above referred, points out that that the Greeks, to whom the week was unknown, attained a great degree of physical development; that the Romans, before they borrowed the week from the Egyptians, were powerful and sturdy of frame; that the American aborigines, the Chinese and the Japanese knew nothing of a seventh day of rest; and yet there was no physical weakness or brevity of existence among these races. The writer further claims that many thousands of persons living under present day conditions, such as literary men, students, lawyers, doctors and clergymen, who make little or no difference between Sunday and the rest of the week in the matter of labor, show no signs that their vigor is impaired or that the number of their years is abridged by failure to observe the weekly day of rest. The California case before referred to, from which most of the Sunday law opponents draw their arguments, has this to say on the physical necessity of a weekly rest-day:

"This argument is founded on the assumption that men are in the habit of working too much, and thereby entailing evil upon society; and that, without compulsion they will not seek the necessary repose which their exhausted natures demand. This is to us a new theory, and is contradicted by

the history of the past and the observation of the present. We have heard, in all ages, of declamations and reproaches against the vice of indolence; but we have yet to learn that there has ever been any general complaint of an intemperate, vicious, unhealthy, or morbid industry. On the contrary, we know that mankind seeks cessation from toil from the natural influences of self-preservation in the same manner and as certainly as they seek slumber, relief from pain, or food to appease their hunger."

Without elaborating upon the contentions of those who deny the constitutionality of Sunday laws, suffice it to say that the reasons advanced in support of these views have not appealed to our courts. The few decisions that have denied the validity of such laws either have been over-ruled or not followed, so that at the present time the courts are practically unanimous in sustaining the usual Sunday statutes. The courts, however, are not a unit with reference to the reasoning employed in sustaining these laws; some considering that they are religious regulations, and may be upheld as such, and others regarding them only as a legitimate exercise of police power of the states.

It is rather a singular fact, that while one of the chief objections advanced against the validity of Sunday laws is that they are purely religious in character and have no place in our institutions, yet some of our courts have upheld them for the very reason that they are religious. The reasoning upon which such decisions have been reached is that Christianity is a part of the common law; that when we adopted the common law, Christianity being a part of it, we also adopted Christianity, together with all of its institutions, including the Christian Sabbath; and that as the Christian institution of the Sabbath prevented work, not in its nature charitable or necessary, and certain amusements, defined as worldly, on the first day of the week, these regulations for Sabbatical observance are part and parcel of our fundamental law. Thus in a case from Arkansas, (*Shover v. The State*, 5 Eng. 259) it was held as follows:

"Sunday, or the Sabbath, is properly and emphatically

called the Lord's Day, and is one amongst the first and most sacred institutions of the Christian religion. This system of religion is recognized as constituting a part and parcel of the common law. \* \* \* \*"

In a case from Pennsylvania, (*Jean Delle's Case*, 3 Phil. 509), the court said:

"The right to repose and quiet upon the Lord's Day rests upon the same basis with the law which declares Christianity to be a part of the common law, and would have existed though the statutes prohibiting work upon the Lord's Day had never been enacted \* \* \* \*"

In discussing this question, the Supreme Court of Missouri (*The State v. Ambs*, 20 Mo. 214) said:

"Those who question the constitutionality of our Sunday laws seem to imagine that the Constitution is to be regarded as an instrument framed for a State composed of strangers collected from all quarters of the globe, each with a religion of his own, bound by no previous social ties, nor sympathizing in any common reminiscences of the past; that, unlike ordinary laws, it is not to be construed in reference to the state and condition of those for whom it was intended, but that the words in which it is comprehended are alone to be regarded, without respect to the history of the people for whom it was made. \* \* \* Bearing in mind that our Constitution was framed for a people whose religion was Christianity, who had long lived under, and experienced the necessity of, laws to secure the observance of Sunday as a day of rest, how remarkable would it have been, that they should have agreed to make common, by their fundamental law, a day consecrated from the birth of their religion, and hallowed by association dear to every Christian."

#### OURS A CHRISTIAN NATION

It is true, no doubt, that the country in which we live is a Christian nation in the sense that most of our people profess the Christian religion and that their standards of conduct and of morality have been to a large extent influenced and shaped by the teachings and precepts of the Man of Galilee. In fact, the Supreme Court of the United

States, in the famous case of *The Church of the Holy Trinity v. The United States*, (143 U. S. 457), held that ours is a Christian nation.

Mr. Justice Brewer delivered the opinion and, after quoting from many official documents to bear out his contention, said:

"If we pass beyond these matters to a view of American life as expressed by its laws, its business, its customs, and its society, we find everywhere a clear recognition of the same trust. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, 'In the name of God, Amen;' the laws respecting the observance of the Sabbath with general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing everywhere under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, and a volume of unofficial declarations to the mass of organic utterances that this is a Christian Nation."

It cannot be doubted that, in the sense used by Mr. Justice Brewer, our people as a nation are Christian people; but it does not follow that because of this fact, Christianity is a part of the common law. Such a conception is based by many of our courts upon a statement of Blackstone to the effect, that one of the offenses of the common law is a profanation of the Lord's Day. It must be remembered, however, that Blackstone was commenting upon the laws of a country in which there was an established church and in which the institutions of the church were enforced by civil laws. When our government was founded and the Constitution was established, there was effected in our institutions a complete divorcement of church and state. Consequently,

if before that time Christianity was ever a part of the common law in this country, it was abolished by the Constitution. Under our system of government, all religions, so long as their teachings and practices do not outrage society, are protected by our laws. The Jew, The Christian, the Mohammedan, and even the atheist, who recognizes no God, are alike protected in their religious views by our Constitutions, both State and national. In this country, where there is no established church, and where perfect religious liberty is guaranteed and protected, decisions upholding the validity of Sunday laws upon the theory that the rules of the Christian Sabbath form a part of our organic law, are utterly at variance with our institutions and ideals.

It is true, no doubt, that most Christians, from a religious standpoint, regard Sunday as a holy day of rest, repose, and quiet, to be spent partly in religious deliberation, thought and worship. There is probably no other Christian institution that does more to advance the cause of right thinking and of right living than does the Sabbath. But Sunday laws cannot be legally upheld for any religious reason based upon an idea that Christianity is a part of the common law of our land, nor upon any other conception of a religious nature. The courts generally recognize that this is true, and by an overwhelming majority, hold that Christianity is not a part of our organic or common law. The rule is well stated in the case of *Rodman v. Robinson*, a North Carolina case reported in 65th L. R. A., page 686:

"If the observance of Sunday were commanded by statute as an act of religion or worship, such statute would be absolutely forbidden. The founder of the Christian religion said that His 'Kingdom was not of this world,' and under our Constitutions, both State and Federal, no act can be required or forbidden by statute because such act may be in accordance with, or against the religious views of any one \* \*\* \* It is incorrect to say that Christianity is part of the common law of the land, however, it may be in England, where there is a union of church and state, which

is forbidden here. The beautiful and divine precepts of the Nazarene do influence the conduct of our people and individuals, and are felt in legislation and every department of activity. They profoundly impress and shape our civilization. But it is by this influence that it acts, and not because it is a part of the organic law, which expressly denies religion any place in the supervision or control of secular affairs."

#### POLICE POWER

It is submitted that the only true and proper principle upon which the validity of Sunday laws can be upheld in the United States, is that such legislation is a legitimate exercise of the police power of the states. In this view the overwhelming weight of authority in this country concurs. It is true, as contended by those who deny the constitutionality of Sunday laws upon this ground, that there must be a real necessity for regulations when the police power is invoked to sustain them. It is true that the rights of property and of personal liberty cannot be invaded unless cogent reasons exist for such invasion. But, as stated above, such rights are not unrestricted rights, and when laws are passed, which in some manner limit the right of acquiring property or the right of personal liberty, such laws are clearly within the police power of the states, if they are required to secure the peace, health and good order of society. In the case of *Ohio v. John Powell* (58 Ohio State 324), the court said:

"But it is further claimed that the statute (referring to Sunday laws) violates the guaranty of personal liberty contained in the first section of the bill of rights. This, though one of the great maxims of our form of government, has never been regarded as limiting the power of legislature in the enactment of such good and wholesome laws as are required to secure the peace, health and good order of society \* \* \* Liberty, as understood in this country, is not license, but liberty regulated by law. The personal liberty of every man is subject to such reasonable regulations as in the wisdom of the legislature, are regarded necessary to promote, not only the peace and good order of society, but its well being."

The police power of a state is incapable of exact definition and of a precise limitation but it may be safely affirmed, according to many decisions, that every law enacted for the preservation of the public peace, health, morals and the social betterment of a community comes within its category. History and human experience teach that rest from toil at stated intervals is an immeasurable benefit to society, whether such cessation be from the pursuit of ordinary business and labor, or from participation in amusements that tear down and destroy rather than re-create. The human body must be continually refreshed. It requires no argument to sustain the proposition, that in our complex business life we should stop at certain intervals to catch our breath and rest in order that the tissues of our physical make-up may be restored and re-created after a period of strenuous toil. Such a rest improves the mind, as well as the body, and gives the people of a community a time within which to reflect upon the higher and better things of life. What is good for the individual is good for the nation. What is necessary for the individual is necessary for the nation; and to argue that there is not national necessity for a day of rest and recreation at stated intervals, is to argue in the face of physical and social facts. With great clearness of thought and expression, Judge Bleckley, in the case of *Hennington v. The State* (90 Ga. 396), in deciding the constitutionality of a Georgia Sunday statute, explained the true principles underlying and supporting Sunday legislation. He said in part:

#### BLECKLEY ON SUNDAY LAWS

"There can be no well founded doubt of its being a police regulation, considering it merely as ordaining the cessation of ordinary labor and business during one day in every week; for the frequent and total suspension of the toils, cares and strain of mind or muscle incident to pursuing an occupation or common employment, is beneficial to every individual, and incidentally to the community at large, the general public. Leisure is no less essential than labor to the well-being of man. Short intervals of leisure at stated

periods reduce wear and tear, promote health, favor cleanliness, encourage social intercourse, afford opportunity for introspection and retrospection, and tend in a high degree to expand the thoughts and sympathies of people, enlarge their information, and elevate their morals. They learn how to be, and come to realize that being is quite as important as doing. Without frequent leisure, the process of forming character could only be begun; it could never advance or be completed; people would be mere machines of labor or business—nothing more. If a law which, in essential respects, betters for all the people the conditions, sanitary, social and individual, under which their daily life is carried on, and which contributes to insure for each, even against his own will, his minimum allowance of leisure, cannot be rightly classed as a police regulation, it would be difficult to imagine any law that could. With respect to the selection of the particular day in each week which has been set apart by our statute as the rest day of the people, religious views and feelings may have had a controlling influence. We doubt not they did have; and it is probable that the same views and feelings had a very powerful influence in dictating the policy of setting apart any day whatever as a day of enforced rest. But neither of these considerations is destructive of the police nature and character of the statute. If good and sufficient police reasons underlie it, and substantial police purposes are involved in its provisions, these reasons and purposes constitute its civil and legal justification, whether they were or not the direct and immediate motives which induced its passage, and have for so long a time kept it in force. Courts are not concerned with the mere beliefs and sentiments of legislators, or with the motives which influence them in enacting laws which are within legislative competency. That which is properly made a civil duty by statute is none the less so because it is also a real or supposed religious obligation; nor is the statute vitiated, or in any wise weakened, by the chance, or even the certainty, that in passing it the legislative mind was swayed by the religious rather than the civil aspect of the measure. Doubtless it is a religious duty to pay debts, but no one supposes that this is any obstacle to its being exacted as a civil duty. With few exceptions, the same may be said of

the whole catalogue of duties specified in the ten commandments. Those of them which are purely and exclusively religious in their nature, cannot be or made civil duties, but all the rest of them may be, in so far as they involve conduct as distinguished from mere operations of mind or states of the affections. Opinions may differ, and they really do differ, as to whether abstaining from labor on Sunday is a religious duty; but whether it is or not, it is certain that the legislature of Georgia has prescribed it as a civil duty. The statute can fairly and rationally be treated as a legitimate police regulation, and thus treated, it is a valid law. There is a wide difference between keeping a day holy as a religious observance, and merely forbearing to labor on that day in one's ordinary vocation or business pursuit."

#### SUNDAY SPORTS

The efforts of those now advocating stricter Sunday laws seem to be directed chiefly towards securing legislation further limiting the conduct of, and participating in, certain sports and amusements on the first day of the week. Upon this phase of Sunday legislation there is a wider difference of opinion than upon any other part of the subject, especially in the popular mind. In a recent issue of "Current History," it is reported that organizations advocating such legislation, are composed principally of persons belonging to religious denominations, chiefly of Calvinistic and Wesleyan traditions; while the opponents of these proposed laws include adherents of religious beliefs to whom Sunday is not a holy day; those of the Christian faith who see no conflict between their religious beliefs and the enjoyment of outdoor sports on Sunday; and those who derive or seek a commercial profit from the lifting of legal restrictions from certain Sunday amusements.

Upon the amusement phase of the subject, the courts have usually held, that where there is a general Sunday law prohibiting the pursuit of one's ordinary business on Sunday, commercial sports, engaged in as one's usual occupation, are prohibited, and that before commercialized amusements can be permitted, specific authority must be granted by legisla-

tive enactment. As to all other kinds of play and pastime, the courts have decided that there must be specific legislative prohibition before they can be declared illegal, if conducted on Sunday. When, however, a sport or pastime, whether amateur or professional, and whether participated in merely for personal amusement or recreation, is prohibited on Sunday by the legislature, the courts have upheld such laws as coming within the police power of the states, and will not undertake to declare that such inhibitions are not beneficial to society, since a decision in such a matter is declared to be for the legislature alone.

#### TREND OF SUNDAY LEGISLATION

It is a very wholesome sign that the modern trend of all Sunday legislation is toward restricting, as much as possible under our present-day conditions, all kinds of work not necessary or charitable, and that class of amusements which have no refreshing, restorative, or re-creative effect upon those who participate in them. It is equally as wholesome a sign that the present trend of legislation is toward removing the limitations and restrictions heretofore thrown around Sunday play, sports and amusements, which are in themselves beneficial to the mental, moral and physical betterment of those who engage in them. Those who advocate the passage of legislation further limiting activities on Sunday will do well to perceive that under our form of government, the people cannot be made by human laws to observe Sunday or any other day in accordance with the creed of any religion. It is within the sphere of the church and not of the government to awaken in the people a conscience as to the holiness and sacredness of the Sabbath day. Only a civil institution of an enforced day of rest can be compelled by our legislatures, under the police power, in furtherance of the welfare of society. Further than this, neither the States nor the national government can go.

## PURPOSES OF THE CONFERENCE OF BAR ASSOCIATION DELEGATES.

---

PAPER BY  
T. A. HAMMOND,  
OF ATLANTA.

---

Mr. President, Ladies and Gentlemen:

The Secretary of this Association informed me that Mr. Stiles W. Burr, of St. Paul, Chairman of the Conference of Bar Association Delegates, had written Mr. Lawton, the President of this Association, that the Council of the Conference would like to have some place on the program of this meeting for an explanation of the character and purpose of the Conference. Mr. Lawton has appointed me to make this explanation. It is my fear, Mr. President, you mistook the real meaning of Mr. Burr's letter, and that the real object of his request was to give him, or some other officer of the Conference, an opportunity to make this explanation.

At the last meeting of this Association (the third I have missed in probably twenty-five years), the President appointed me one of the delegates to the Conference of Bar Associations. The meeting was held at St. Louis, Missouri, but my duties as a member of the Executive Committee of the American Bar Association so absorbed my time I was unable to attend any meeting of the Conference. For this reason I am unable to make any first-hand report of the proceedings of such Conference, and any explanation I may attempt to make of its character and purpose must necessarily come from the printed reports made by Committees of the Conference or by its officers. A very com-

prehensive report of the Fifth Session of the Conference held at St. Louis was made by its Secretary, Mr. Julius Henry Cohen. A very elaborate report of a Committee to act upon the recommendations of the Conference of State and Local Bar Associations was sent to all Bar Associations, members of the Conference, and also to the Presidents of such bar associations. While the particular officers of this Association, if they have read these reports, may be familiar with the character and purpose of the Conference, it is doubtful if the members generally have any fixed idea of its purpose and character.

Having, to some extent, examined these reports, it is my hope in following generally what others have written, to give this Association some idea of the character and purpose of the Conference.

In the first place, it is my understanding this Conference was first organized at the meeting held at Saratoga in 19—. The idea was originated by that distinguished lawyer, Mr. Elihu Root, of New York, who was President of the American Bar Association at the meeting held at Saratoga. The meeting of the conference at Saratoga was probably the most important and the most largely attended of any meeting since its organization. So much interest was taken in the meeting that it rivaled in number and interest the proceedings of the American Bar Association itself, both meetings being held during different hours, but sometime on the same day. It elected a Chairman, Vice-Chairman, Secretary, and Treasurer, each to hold office for a term of one year or until their successors were elected and qualified. It elected members to what is called a "Council" composed of eight distinguished lawyers, all I believe, members of the American Bar Association. This "Council" is now composed of the following distinguished gentlemen:

Elihu Root, New York, N. Y.,  
Moorefield Storey, Boston, Mass.,  
Chas. A. Boston, New York, N. Y.,  
Thos. H. O'Donnell, Denver, Col.,

Thos. W. Shelton, Norfolk, Va.,  
Wm. H. H. Piatt, Kansas City, Mo.,  
Wm. V. Rooker, Indianapolis, Ind.,  
Wm. J. Fitzgerald, Scranton, Pa.

It adopted by-laws. The first and second are:

1st—The purpose of this conference is to create a better understanding between the members of the American Bar and to induce a better and more effective co-operation by the Bar Associations of the country in the maintenance, the extension and the observance of the standards set by the American Bar Association.

2nd—The membership shall consist of delegates from the various Bar Associations of the country, to be selected as follows: Five delegates from the American Bar Association, three delegates from each State Association and two delegates from each Local Bar Association throughout the country, to be elected or appointed in such manner and for such terms as each Bar Association shall respectively determine.

Under the by-laws as originally drafted, the Conference appeared to be almost a separate and distinct organization, which might in time rival the importance of the American Bar Association, notwithstanding the great majority of the delegates were also members of the American Bar Association, and notwithstanding the Conference considered itself a guest of the American Bar Association, and was dependent upon it to furnish it the necessary expenses incident to the conduct of its business.

Before the meeting of the American Bar Association in St. Louis last year, Mr. Thaddeus Terry, a member of the Executive Committee of the American Bar Association, had with wonderful care and skill drafted a new constitution and by-laws for the American Bar Association and in order to keep the Conference as a part of the American Bar Association and not permit it under the zeal of its own officers, to drift away from the position it occupied as a guest of the American Bar Association, insisted that the Conference should be one of the sections of the American Bar Associa-

tion, so that resolutions coming from the Conference should, before going out as general recommendations, be first submitted to, and approved by the American Bar Association. Therefore, at St. Louis the by-laws of the Conference were amended to meet this constitutional provision of the American Bar Association and now under the by-laws of the Conference:

"Any resolution adopted or any action taken in any session of the Section shall, on vote to that effect of the Section, be reported directly by the Chairman of this Section to the general meeting of the American Bar Association for such action thereon as the Association may see fit."

Also:

"The Conference shall annually report its proceedings and recommendations to the American Bar Association and to all State and Local Bar Associations having representatives in the Conference. Action taken by the Conference must be approved by the American Bar Association before the same becomes effective to bind said Association."

And the by-laws so offered could become effective, only from the date of approval by the Executive Committee of the American Bar Association.

The American Bar Association has recognized the very valuable work of this Section, and since entire harmony exists between this Section of State Bar Associations, and the American Bar Associations, each have become more and more helpful to and dependent upon each other. The Conference has a wonderful opportunity of suggesting to the American Bar Association resolutions that will prove beneficial to the lawyers and the bar associations all over this country.

To give you some idea of the importance of this Conference,—At the last meeting held at St. Louis, August 24, 1920, thirty-five State Bar Associations were represented, thirty-two Local Bar Associations—in all sixty-four Bar Associations, to which must be added seventy-nine delegates from the American Bar Association. In the report made by the Section of the Conference after the meeting at St. Louis,

the hope was expressed that each State Bar Association and each Local Bar Association will again select delegates to the meeting that will take place this year at Cincinnati, and that the names of these delegates be promptly reported to the Secretary of each Section. In these States which have been honored by representation on the Council, the hope is expressed by the Secretary of the Council that such States will continue to select the delegates from their Association who are now officers or members of the Council, for under the by-laws an officer or member of the Council ceases to be such, if he ceases to be a delegate. The object is, that the Council may not be broken, and that each may serve out their representative terms—the present Council now holding office some for four, some for three, some for two, and some for one year. This reference to the members of the Council is made only for the purpose of information, since this State has not up to this time been honored by electing any of its delegates on the Council.

In the Secretary's report to the various Associations he enclosed a copy of the report of the Committee on State Bar organizations. This report recommended and requested that each State and Local Bar Association consider the report and take action thereon. One of the very important and interesting reports made by a Special Committee is on the subject of "What constitutes Practice of Law and what constitutes Unlawful and Improper practice of the Law by Laymen or Lay Associations."

It would consume too much of your time to go into the details of this report, but following the idea of the unlawful practice of laymen or lay agencies to practice law, the following resolutions were adopted:

*"Resolved:* That it is the sense of this meeting that it is in the interest of society that the intimate and direct relationship of attorney and client shall be preserved, and that corporate or lay practice of law is destructive of that relationship and tends to lower the standard of professional responsibility;

*"Resolved Further:* That Trust Companies, while performing proper and legitimate functions of a business and fiduciary character, are not constituted or organized for the purpose of furnishing legal advice to clients—drawing wills or furnishing legal services;

*"Resolved Further:* That the efforts of the Trust Company Section of the American Bankers' Association to eliminate evil practices on the part of Trust Companies be encouraged and the effort to co-operate with the Bar be cordially welcomed;

*"Resolved:* To that end, That we recommend to State and Local Bar Associations that they bring to the attention of the Trust Company Section of the American Bankers' Association any evil practices of Trust Companies or bankers of which they are aware in order that the Bankers' organization may, like the Lawyers' organization, purge its ranks of wrongdoing or error;

*"Resolved Further:* That a special Committee of six be appointed to prepare for the use of State and Local Bar Associations a careful brief of what constitutes practice of the law and what constitutes unlawful and improper practice of the law by layman or lay agencies, and that said committee report at the next Conference.

Such brief was prepared by five distinguished lawyers and reported to the Conference. It is printed and copies can be secured from Mr. Julius Henry Cohen of New York, Secretary of the Conference.

In my opinion but few lawyers will disagree to the wisdom of these resolutions. Indeed, aside from the wisdom, the practice now continually growing of Trust Companies without a license, without the responsibility under the oath each practicing law must take, to usurp and take from the vocation of lawyers, business rightfully belonging to lawyers, and thus to commercialize a vocation into a competitive business, is a growing evil that should be corrected, and if necessary prohibited by statutes of the States.

In the report of the Committee on State Bar Association, made by the Chairman, Mr. Clarence N. Goodwin,

of Chicago, Illinois, it is stated that the suggestion made for the incorporation of the various State Bar Associations, seems to have been induced by a general belief that the following conditions exist:

"That the legal profession does not, at this time, enjoy that place in the confidence and esteem of the public to which it is plainly entitled."

Mr. Goodwin says:

"A painstaking investigation leads the committee to a conviction that the facts justify the belief that no reasonably satisfactory status can be acquired by the legal profession except through the creation of State Bar organizations which shall be inclusive of the entire Bar and possess broad powers of admission and self-government.

"Your committee is not unaware of the excellent work accomplished by the voluntary State Bar organizations now existing, and it attributes such measure of confidence and esteem as the Bar now enjoys to a considerable extent to the efforts of these and Local Bar Associations. It cannot, however, blind itself to the fact that the bar does not occupy that position to which the highly ethical conduct and undoubted learning of the great majority of its members entitles it. The many suffer from the misconduct of the few, and obviously the profession, as a whole, cannot attain its proper place in the public estimation until admission to and continuance at the Bar are in themselves a guarantee of honesty and capacity. Clearly, a condition should be attained where any man can go to any lawyer and obtain reasonably sound and altogether honest advice on any ordinary legal question, and for a fee strictly limited by the degree of the importance of the question involved, and the value of the services rendered.

"The limitation on the value of our voluntary Bar organizations arises from the fact that they embrace but a small fraction of the Bar's membership, have no official status and no powers of discipline over the members of the Bar as such, and are limited in their internal discipline by the fact that the great mass of the Bar lies entirely outside their jurisdiction."

There has been prepared what is called a "Model Act," which provides for the incorporation of existing State Bar Associations. I have not seen this Act but it seems that four objections have been made to the adoption of such a course:

1st:—The constitutions of many States prohibit incorporation by special act.

2nd:—A seemingly strong sentiment within and without the Bar against such special incorporation.

3rd:—A doubt as to whether any lawyer could be compelled to be a member of the corporation so constituted.

4th:—A belief that the old State Bar Associations on account of their limited membership and long standing are capable of performing functions which might not be so well performed by organizations of the character proposed.

In the opinion of many lawyers these objections are not without merit. However, after considerable study of the subject by the Committee in charge, and after a conference with Mr. Jas. Byre, of New York, and Mr. Chas. A. Boston, of New York, both distinguished lawyers and members of the American Bar Association and delegates to the Conference from the American Bar Association, the Committee was led to believe it had discovered practical means by which the desired object may legally be attained.

It will be generally admitted that every member of the Bar of a State is by virtue of that fact an officer of the court to which he is admitted. He, therefore, has a definite status as a part of the machinery of the State government. The members of the Bar are the advising and moving officers of the court. The members of the Bench are the deciding and decreeing officers. The defense of a criminal is the official and mandatory duty of the lawyer when designated by the Court. His responsibility for his actions in court and in legal matters is the responsibility of a government official, and not that of a private citizen. Therefore, the Supreme Court Bar of the State is a body of public officials appointed and commissioned under the laws and constitutes an integral part of its judicial department. They are, in fact and in

law, a body politic, but unfortunately a body politic which has never organized as such, and has never been organized in this country by any legislative act. The Committee then concludes with the statement:

"We believe that what the situation demands is an act of the Legislature providing for the necessary legal machinery through which the Bar may function."

This committee informed me when I read it, and I now undertake to inform you who probably have not read the report—that this is the only civilized nation in the world in which the Judicial Bar is not a self-governing responsible body politic, and it is likewise the only civilized nation in which the title of a lawyer does not carry with it the guarantee of professional integrity and responsibility.

Under the so-called Model Act, the present State Bar Associations will remain undisturbed. They will continue to function as they have heretofore to any extent which their members may think advisable. Thus the fourth objection seems to be met.

The fear was expressed that if there was an organized Bar such as has been suggested and outlined, and it shall prove capable of performing all the functions heretofore performed by the State Bar Associations, very naturally the latter will sooner or later cease to exist. However, it must be recognized that there are certain social and other functions which an organized Bar will find itself incapable of properly performing. Therefore the present voluntary organization will still be in existence for the purpose of supplementing and aiding the officially constituted Bar.

It may be of interest to the members of this Association to know that the Nebraska State Bar Association at its annual meeting in December, 1919, devoted a day to the consideration of the questions which are now called to your attention. There was a vigorous debate, but the Association placed itself on record as favoring the proposition, and directed its committee to prepare and submit a bill for the purpose stated to the next session of the Legislature. Mr.

Clarence N. Goodwin attended the meeting of the Milwaukee Bar Association, and in his printed report states that he found the members of that Association apparently unanimous in favor of an organization of the Wisconsin Bar.

The Maryland Bar Association set aside a day for the discussion of the question at its annual meeting at Atlantic City in June, 1920. Mr. Goodwin was not present at this meeting but Hon. Morris Soper, Chief Justice of the Supreme Bench at Baltimore City, and President of the Maryland State Bar Association, advised Mr. Goodwin that the matter was fully and favorably presented, and that the sentiment of the Maryland State Bar Association is in favor of the passage of a bill organizing the Bar in the manner here proposed.

A like discussion was held at the meeting of the Michigan State Bar Association. It is reported that the President of that Association, Mr. Claude Carney, devoted practically all of his annual address to the subject. The Michigan Bar Association authorized the President to appoint a committee to draft a bill to be presented at the next Legislature for the organization of the State Bar with similar powers to those here suggested.

During the same year, Judge Jno. C. Hogin, President of the Kansas State Bar Association, devoted his address at the meeting of that Association to the same subject and a committee was appointed to draft and report a bill.

The same was presented to the Illinois State Bar Association but the incoming President, Hon. Logan Hay, in the course of his remarks at the annual dinner, said that he expected to make the consideration of the proposal a part of the work of the Illinois Bar Association during the coming year.

Mr. Goodwin in his report says:

"Your committee does not assume to say that it has exhausted the subject in hand, but it does believe that its investigation has discovered the fundamental principles upon which any successful organization of an entire State Bar

must rest, and it believes they may be concisely stated as follows:

"(1) The act should not be an attempt to transform a voluntary organization into a body politic, but it should, rather, be a legislative recognition of the fact that the entire existing Bar of the State, being in its nature a body composed of public officials, constituting an integral part of the judicial department, is inherently a body politic and the act should so declare it to be.

"(2) It should provide a governing body selected by the entire bar, which should have powers of discipline and admission subject to review and final control, for the present at least, by the Supreme Court of the State.

"(3) The members should be given an opportunity to express themselves officially on all questions touching the welfare of the Bar and the better administration of justice.

"(4) The provisions of the act should be such as to give the members of the Bar the fullest and most untrammelled means of expressing their choice in the selection of the governing body; and in this way every member of the Bar should be made to feel that he is a responsible part of the officially organized Bar of the State and has duties and obligations growing out of that relation."

One of the principal points dwelt upon by Mr. Goodwin in his report is the unintentional unethical conduct of young lawyers and he states that the most potent cause of unethical conduct in our profession is that the young lawyer does not become a part of an officially organized Bar, and in the ordinary case does not become a part of a voluntary professional organization. He remains isolated without anything to make him conscious of his relation to the Bar as a whole, without being brought in contact with its great traditions, and without anyone authorized by law to advise him with reference to his duties.

Thus, when green in judgment and often needy in circumstances, he is called on to decide the most delicate questions of professional conduct, and for the most part, is obliged to work them out alone. Is it any wonder that in

such circumstances, that being so isolated, he sometimes becomes an Ishmaelite, with his hand against every man and every man's hand against him? If young lawyers by the very fact of their admission to a Bar become a part of an officially organized supreme court bar, and are given a voice in the selection of its governors and the establishment of its ethical code, they will support with enthusiasm the high traditions of their profession.

He further argues,—To leave the initiative in matters of discipline in the hands of a voluntary association, is to leave those outside the association without responsibility or power, and therefore often without interest in the subject matter. Place discipline in the hands of an organized bar and you make every lawyer conscious of his responsibility and arouse his keenest interest.

Before concluding this paper, permit me to again remind you of the growing evil of the business of lay practitioners of the law, and to invite you to read and consider the resolutions of the Conference of Delegates of Bar Associations which was adopted at the meeting at Boston, Mass., Sept. 2, 1919, and which have been read to you.

If this Conference can succeed in having any one State of this Union embody the sense of these resolutions into a legislative enactment, the character and purpose of the Conference will have been fully vindicated and approved by the Bar of all States, and will in my opinion also be approved and applauded by the people of the various States. It is neither proper nor wise for Trust Companies or other Lay practitioners of the Law, to seek to commercialize into a *business*, the vocation of lawyers.

## REPORT OF COMMITTEE ON MEMORIALS.

*To the President of the Georgia Bar Association:*

The Committee on Memorials begs leave to report that since the last annual meeting of this Association, six members thereof have departed this life, to-wit: J. L. Sweat, of Waycross; Spencer Roane Atkinson, of Atlanta; E. S. Elliott, of Savannah; L. B. Norton, of Lithonia, and Dupont Guerry and Richard Curd of Macon.

Memorials of these deceased members have been prepared and filed with the Secretary, as required by the By-Laws.

Respectfully submitted,

A. W. COZART, Chairman.

## MEMORIAL OF J. L. SWEAT

BY A. W. COZART, OF COLUMBUS.

Judge Joel L. Sweat was born in Ware County, Georgia, September 21, 1847, and died at his home in Waycross, Ware County, January 24, 1921.

He was admitted to the bar at the April Term, 1869, of Clinch Superior Court. He practiced law at Homerville, Georgia, for nearly thirty years and during the last years of his life, he practiced at Waycross.

As a Confederate soldier, his particular devotion to duty, high patriotism and valor were what was to have been expected of one Judge Sweat's noble Revolutionary ancestry.

He was a brave soldier, an astute lawyer, a safe counselor, a just judge, a patriotic citizen, a wise legislator, and a Christian gentleman.

He was one of the vital forces of South Georgia for more than a half century and it could be said of him that he practiced his profession through three generations.

A few years ago "A History of Clinch County, Georgia" was published, and in it appeared a concise sketch of Judge Sweat's life, which we take the liberty of quoting as a part of this memorial:

"JOEL SWEAT was born in Ware County, September 21, 1847, the son of Samuel and Maria Sweat, and a grandson of Nathaniel Sweat, a soldier of the Revolutionary War. He was raised in Pierce county, and completed his education at the old Blackshear Academy. He enlisted in the Confederate cavalry service in 1862, and for three years was a brave soldier. In 1865 he located at Homerville, where he was in 1867 elected justice of the peace. Under David O'Quin he served as deputy clerk of the Superior Court. He also engaged in the mercantile business, and was admitted to the bar in Homerville in 1869. Under the

administration of Governor James M. Smith, he was a clerk in the executive department for a short while, and during the sessions of the Legislature of 1875-1876, he was chief clerk of the House of Representatives. Returning to Homerville, he resumed the practice of law, which very soon grew to be very lucrative and of wide extent. In 1880 Colonel Sweat was elected representative from Clinch County, defeating A. B. Findley and Sherod Tomlinson. Two years later he was re-elected defeating David J. Sirmans. In 1884 he was a delegate to the Democratic National Convention at Chicago and at St. Louis in 1888. In 1887 he removed to Waycross where he has since resided engaging in the active practice of law. In 1892 Judge S. R. Atkinson resigned as Judge of the Superior Courts of the Brunswick Circuit and Colonel Sweat was appointed by Governor Northen to fill the vacancy. When the Legislature met he was elected Judge for the unexpired term, and in 1895 was elected for the full term. He very ably filled this position until January, 1899, when he retired and resumed the practice of law. During the Legislature of 1913-14 he was State Senator from the Fifth District.

Judge Sweat was married to Miss Maggie M. Hitch, daughter of Sylvanus Hitch of Homerville, January 10, 1869, and by her had three children. Colonel Sweat was for several years Superintendent of the Methodist Sunday School at Homerville, and for seven years a recording steward of the church. His membership is now with the First Methodist Church of Waycross."







*Alfred P. Hunsan*



## MEMORIAL OF SPENCER ROANE ATKINSON.

BY JOHN M. SLATON, OF ATLANTA.

Fortunate is the man, and more fortunate the Commonwealth in which such a man has lived, who realizes, not from the motive of personal gain, but actuated solely by heart's desires, that this whole life is and should be a service. In the life, character, and career of the subject of this Memorial, the word *service*, in its best and most comprehensive sense, was always his guiding star, from the straight course of which he never swerved.

Spencer Roane Atkinson was the son of Alexander S. Atkinson and Mary Ann McDonald Atkinson. His mother was the eldest daughter of Charles J. McDonald, one of the early Governors of Georgia. He was born at the old family Homestead "Incachee" in Camden County Georgia, on November 1, 1852. At the beginning of the war between the States, his parents refugeed to Scottsborough, near Milledgeville, Georgia, when this young boy, just about eight years of age at the time, attended a private school; and later, after the close of the war, his parents moved to Marietta, Georgia, where he also attended a private school conducted by a Mr. Hunt. The fortunes of the Civil War left his family, as was the case of countless others similarly situated, in the most straitened financial condition, with the little property they had left, quite barren.

In the exigencies of this situation, his father at the close of the Civil War purchased a little farm near Marietta, and the subject of this sketch, who was about fourteen years of age at the time, together with his older brother, Burwell, cultivated this farm for the purpose of maintaining themselves and those dear to them. He never had opportunity to attend any school or college after he attained the age of fourteen years.

At the age of eighteen, young Atkinson decided to try his fortune in Texas, then a pioneer country. He remained there a year, winning among other things the friendship of a distinguished Judge whose advice and inspiration decided him on the choice of the profession in which later he made such a splendid success. In accordance with this counsel, he returned to Georgia intending to pursue the study of law in his native State, and afterwards to enter the practice in Texas. He went into office of the late Hon. George N. Lester, then a leading Georgia attorney, who afterwards became Judge of the Superior Courts of the Blue Ridge Circuit, and Attorney General of the State. Studying under Judge Lester, he was admitted to the Bar at Marietta, Georgia, in the year 1875. He married Miss Mary Virginia Harrison, of Camden County, who survives him. His home life was beautiful, and this good woman not only encouraged him at all times, but was his constant, devoted companion and his inspiration in the performance and accomplishment of the things highest and noblest.

For a short time after his admission to the Bar, he practiced law in Cobb and adjoining counties. He won many friends, but it was still his intention to locate permanently in Texas. Before leaving for the West, he returned to his old home in Camden County to visit his kinspeople. While on this visit, he was unexpectedly employed in a number of cases that detained him for a time. Before these were finished, others followed, and soon, almost before he realized it, he found himself anchored to his home community, and thereupon gave up his intention to locate in Texas.

In the practice of law in Camden County, Judge Atkinson attracted the attention of the late Judge John L. Harris, the presiding Judge of the Brunswick Circuit. Judge Harris suggested a partnership between him and Hon. Courtland Symmes, then and now a brilliant and distinguished lawyer of Brunswick. The partnership was formed under the name

of Symmes & Atkinson, and soon became one of the leading law firms of the State. It was during this period that Judge Atkinson was named as Presidential Elector from the State at Large to cast Georgia's vote for Grover Cleveland in 1884. On November 10, 1886, some time after this partnership was dissolved, he was elected Judge of the Superior Courts, of the Brunswick Circuit, succeeding Judge Symmes, his former partner, who was not a candidate for reelection. His record as a Superior Court Judge will ever be remembered, not only for the unusual ability with which he presided, but for the expeditious and fair manner in which he handled the many cases of importance that came before him to be defended and tried. He was patient and just at all times, and combined all the qualifications so necessary to the real judicial officer, those of honesty, courage, justice and ability.

His administration of this office accorded with his successful practice of the law, and added to his reputation in legal learning and justness. When he resigned in 1892, the members of the Bar of the Brunswick Circuit presented him with an elaborate silver service in recognition of their love, admiration and respect for him. He ever prized this gift.

Upon retiring from the Circuit Court Bench, Judge Atkinson resumed the practice of law in Brunswick, forming a partnership with his younger brother, now Associate Justice Samuel C. Atkinson, and their cousin, the late Harry F. Dunwoody, under the firm name of Atkinson, Dunwoody & Atkinson. This firm enjoyed a splendid success, though its existence was short, for the reason that when the office of Chief Justice of the Supreme Court of Georgia became vacant on October 24th, 1894, by resignation of Chief Justice Bleckley, Justice Simmons was elected to succeed Judge Bleckley, and Judge Atkinson was elected an Associate Justice. His first decision and opinion appears in the 94th Georgia Reports, and from this Volume, his opinions ap-

pear through the 102nd Georgia Reports. Judge Atkinson resigned as an Associate Justice in November, 1897.

In December of the year of his resignation, his legal attainments were recognized by his appointment as a member of the railroad commission of Georgia, the law then providing for three commissioners, one a railroad man, one a business man, and the third a lawyer, each experienced in his calling. He served upon this commission with marked ability, reaching the rank of Chairman. His last service was as a member of the State Legislature, ably representing Fulton County for the terms 1915-1916, 1917-1918. For a number of years, and up until 1919, Judge Atkinson was associated in the practise of law in Atlanta with the late Judge E. Winn Born, under the firm name of Atkinson & Born. Judge Born was a prominent Atlanta lawyer, whom Judge Atkinson greatly admired, and to whom he was greatly attached.

Judge Atkinson's most conspicuous characteristic, to the minds of those who knew him best, was to assist others in the affairs of life, not alone by encouragment and counsel, but in the material way. His generosity in this regard was boundless. The years of his life in which he could have reaped the largest financial returns from the private practice of his profession were dedicated to public service for comparatively small pecuniary reward; but notwithstanding this, he many times shared his small income with deserving young men and women to aid them to procure an education. To some he would lend; to others he gave; none worthy would he refuse. He performed good deeds quietly, dispensing the charities that sooth and heal and bless.

Though he went from the plow handles to the Bar, he was a great lawyer, a wise and safe counsellor, and a powerful advocate. Possessing wonderful oratorical ability, always the master of the law and facts of his case, graceful, courteous, logical, forceful, without appealing to passion or prejudice, the rights of his clients were always skilfully and properly protected before Court and Jury.

His record on the Supreme Court Bench stands out as a sparkling gem in the judicial diadem of this tribunal of justice. He was a legal architect. His opinions were clear-cut, sound, logical and above all just. Many of them are masterpieces in the law and through them all are seen his keen sense of justice. He adorned the Bench and strengthened the pillars thereof by raising august position higher and higher, thereby making a durable contribution to human rights and human liberties as guaranteed to freemen under the widest and broadest and soundest interpretation of the laws and constitutions of State and country.

He had an omnivorous taste for literature and remembered every thing he read. He loved, first the Bible, and next history, science, poetry and good fiction. But the law was his master, and he was a master of the law. Truly religious, a Christian gentleman, he lived honestly, hurt nobody and rendered to every man his just dues.

Innately sincere, he was a true and staunch friend, and indeed his friendship was a valuable asset to those who were fortunate enough to possess it. Having the courage of his convictions, he never wavered, and there was never a doubt as to where he stood on any question. While he was as brave as a lion, yet in his relations to his loved ones and friends, he was as gentle and thoughtful as a woman.

He thought in a big, broad-gauged, beautiful way. He was never double in his words and deeds. He had a face and figure that indicated courage, strength of character and intellectual powers. He was a nobleman, not by word, but by action, combining the union of the highest conscience and the highest sympathy.

He lived in deeds, not years. The evening of his life reflected its morning sunshines, and though called to his last reward before three score and ten, his life was full, and was a marvelous success in the broadest and highest sense. Surely his "works will praise him in the Gates."

The one requested to prepare this memorial desires to express his obligation both for language and data to Mr. W. W. Visanska, of the Atlanta Bar, who was long associated with Judge Atkinson.

## MEMORIAL OF EDWARD STILES ELLIOTT.

BY GEORGE H. RITCHER, OF SAVANNAH.

Edward Stiles Elliott was born in Savannah, G., November 3rd, 1865, and died there December 11th, 1920.

He received his general education in the public schools of that city, and at the University of the South, graduating at the age of 18. He taught school for three years in Florida, took a post graduate course in Latin at Johns Hopkins University, and taught for a year in Charleston, S. C.

He then adopted the law as his career. Studying in the offices of Messrs. Lawton & Cunningham, and also at the University of Virginia, he was admitted to the bar June 13th, 1889.

From that time to his death he devoted himself to the practice of his profession. In him the poor, weak and oppressed ever found a zealous advocate, and, though always inadequately, and often never, compensated, he would not decline or desert their cause, but gave to all the best that was in him. He became a learned lawyer, and appeared in much important litigation; and had the great good fortune to realize at least one of his fond hopes, that of appearing before the Supreme Court of the United States, and of gaining his cause.

No sketch, however brief, would be complete without reference to his character. He was always and everywhere the humble and devout follower of Christ. His religion was not an affair of one day a week, but dominated his daily life, and guided him in all his affairs. And he was recognized for what he was—an honest and upright man. It may properly be said that he did not live in vain, for his life was a refutation of the vulgar idea that one cannot be a lawyer, and at the same time an honest man.

## MEMORIAL OF LEMUEL BOND NORTON.

BY DAVID P. PHILLIPS, OF LITHONIA, AND BOND ALMOND, OF ATLANTA.

Lemuel Bond Norton was born at Lithonia, Dekalb County, Georgia, January 25th, 1869. There he spent the early part of his life and received his education. His parents not being able to give him a college education, shortly after he finished his common school education he applied himself to the study of law and by his diligence and perseverance he mastered Blackstone and on August 25th, 1894, he was admitted to the bar by that eminent jurist, Judge Richard H. Clark.

He then took up the practice of his chosen profession in the town of his birth—the home of his people—Lithonia. He soon overcame the hardships of a young lawyer; he attained first confidence in his own abilities and then the confidence of his people and his brother members of the bar. He soon won recognition from the bench and bar as being a very able trial lawyer and as he grew in the practice, this ability was demonstrated on numerous occasions.

In 1902 he married Miss Mabel Chupp and to this union were born three children. He suffered the loss of two of these children, being survived at his death by Lamar, a son 16 years of age. In 1916 his wife was called by death and being a devout lover of his home, this was an extreme shock to him. His life in his home was the greatest moments of his happiness. In 1917 he married Mrs. Belle Cannon Johnson, and she with his son Lamar, survives him.

Colonel Norton was a man some 5 feet 8 inches in height and weighed about two hundred pounds. On his broad shoulders he had a fine head covered with iron gray silken hair; his eyes were of the piercing grey kind. direct and friendly; he had a ruddy complexion. He at all times

dressed in neat and well chosen clothes, carrying himself in a dignified military manner. He was a man that impressed one upon sight as being every inch a man—and he was. He looked the part of an advocate before the bar—and he did not deceive his admirers. He was gifted with a poise and balance that few men possess. Whether he was before his Sunday school class or a mass meeting of his fellow townsmen or before a court of a strange circuit, he always looked at home and at ease. Courteous, kind, gentle, considerate, and, at the same time, firm, strong and courageous.

During his lifetime, he never shirked a call of duty, church or State. On four occasions he was implored to become mayor of his home town, and though burdened with a large practice he accepted the mandate of his townsmen and served his people with distinction and honor, and at the time of his death he was mayor of Lithonia. In appreciation of his achievements as a lawyer and his service at the bar his fellow lawyers in 1920 elected him as president of the Dekalb County Bar Association, and at his death he was its president. He was a good citizen—a leader in the betterment of civic government. He believed it was the duty of the lawyer to serve his community whenever and wherever he could, not with hope of any reward but because it was his duty.

He was a devout Christian gentleman. As an active church worker in the Lithonia Methodist Church, of which he was a life long member, his death was keenly felt. For fifteen years he had been a steward in the church. In church affairs he led; he could always be counted upon as being in his place and in the performance of his allotted duty, be it teacher or steward. He was a Christian, God-fearing lawyer. He was on the staff of Governor Hoke Smith during his first administration.

His death was felt keenly among his friends and brothers of the bar because, firstly, he was such a vital part of the community and his local bar, and, secondly because of the

suddenness with which death took him away. In good health on the morning of February 11th, 1921, he went to his office as usual and worked diligently until three o'clock in the afternoon in the preparation of some cases. Feeling unwell he went home and at dusk he suffered an attack with his heart, which in a short time took him to eternal rest and peace. He is gone, but his life's work lives on—a comfort to his family and a heritage to his friends.

## MEMORIAL OF DUPONT GUERRY.

BY THE COMMITTEE.

DuPont Guerry, long an honored member of this Association, died on September 11, 1920, at the age of seventy-two years.

Judge Guerry was born and reared at Americus. While yet in his teens, he entered the Confederate Army and took part in much of the fighting in the Civil War. He came out of the army with the rank of lieutenant.

Just after the war he entered the practice at Georgetown in Colquitt County. Shortly thereafter, in 1866, he removed to Americus and formed a partnership with his father, Wm. B. Guerry, himself a noted lawyer of Americus.

In 1876 Judge Guerry was married to Miss Fannie Davenport, of Americus. His wife, with four children, and eight grand-children, survive him.

He was elected to the State Senate from the Thirteenth Senatorial District in 1879 and during 1880 and 1881 served with distinction as a member of that body.

In 1886, Judge Guerry was appointed by President Cleveland, United States District Attorney for the Southern District of Georgia. He then removed to Macon, where he spent the remainder of his long and useful life. He filled this position with distinction for several years and then entered the general practice at Macon, forming a partnership with Joe Hill Hall under the firm name of Guerry and Hall. In 1890 Judge George W. Gustin, a distinguished Macon lawyer, entered this firm and the firm name became Gustin, Guerry & Hall. Judge Gustin died in 1893 and the partnership between Judge Guerry and Mr. Hall was continued until 1903.

In 1892 he was a delegate to the Democratic National Convention which nominated Cleveland for the Presidency. In 1902 he ran for Governor on a Prohibition ticket, but

was defeated by the late Governor and Senator, J. M. Terrell.

In 1903, Judge Guerry, having been for years a trustee of Wesleyan College, was chosen president of that institution. Here he served with conspicuous success for six years, when he resigned, again to enter the practice of law.

He formed a partnership with his old partner, Joe Hill Hall and Warren Roberts under the firm name of Guerry, Hall & Roberts, which continued up until 1912. He afterwards practiced with his son, Davenport, under the firm name of Guerry & Son.

In 1916, Governor Harris appointed him to fill the unexpired term of Judge Robert Hodges as Judge of the City Court of Macon. In 1918, he was reappointed for the full term by Governor Dorsey. He served as judge of this court until his death in September 1920.

This bare recital of the facts of Judge Guerry's life, while indicating much of the calibre of the man, can yet give only a faint idea of his qualities and his worth. He was a profound lawyer, a powerful orator, a great advocate, a just judge. Unusual ability, unswerving integrity, a keen sense of right, a rugged honesty and enduring devotion to duty marked his long life and made him a most useful citizen of the community. He was an ornament to our profession. His was an example worthy of our emulation.

## MEMORIAL OF RICHARD CURD.

BY THE COMMITTEE.

Richard Curd was born on August 10, 1876 at Macon, where he received his early education. He was graduated from the Academic department of the University of Virginia in 1894 and received his degree in law from the same institution in 1899.

Immediately thereafter, he began the practice of law at Macon and continued in practice there until his death on December 22, 1920.

From time to time, he was associated in the practice with many of the leading lawyers of the Macon Bar, and he was recognized as a lawyer of extraordinary ability.

Quiet, undemonstrative, with no taste for noise or display, he chose to walk in life's sequestered way. But to his friends who knew him and loved him, he was all that a friend should be. With them will linger long the memory of him and regret that he passed from them.

## REPORT OF THE TREASURER.

*Mr. President and Fellow Members of the Georgia Bar Association:*

A gradual depletion of our treasury is going on. It began with the process of inflation of the country's currency, which did not increase our income, but did increase our expenses, and has been continued by the process of deflation which decreases our income by preventing some from maintaining their membership and by increasing expenses. Inflation was unavoidable because of the World War. Deflation followed at the behest of those who control. While the war lasted, the supreme motive was victory. Its cost had to be disregarded. Fortunately our smoke-houses and cribs were full, and these supplies lasted until the end of the war and well nigh until the end of the period of inflation. Until then only a few had become distressed by the increased cost of living. Not until the shouts of victory had subsided and the delirium of extravagance caused by inflation had abated did the process of deflation begin. The cost of planting in the spring time was largely in excess of the value of the abundant crops garnered in the harvest time. The cry of alarm resounded all over the country, but no voice was heard to give any assurance of relief. No Moses has appeared to lead the people out of the quagmires of greed, extravagance and selfishness, and show them the path of peace, good will and righteousness. The process of deflation continues. And the coffers of the few are being filled to repletion, while the pockets of the masses are being drained to exhaustion. To the latter class, this Association in its corporate capacity belongs. We should strive to increase its income by maintaining and increasing its membership and should beware of expenses.

A statement of our receipts and disbursements during the past year is herewith submitted. It has been examined and approved by the Executive Committee. It may be summarized as follows:

Cash balance May 27th, 1920, the date	
of the Treasurer's last report, was--	\$1,404.89
Dues collected since that date-----	2,610.00
	<hr/>
	\$4,014.89
Disbursements since same date-----	2,983.54
	<hr/>
Cash balance -----	\$1,031.35

Respectfully submitted,

Z. D. HARRISON, *Treasurer.*

## STATEMENT OF RECEIPTS AND DISBURSEMENTS.

*Z. D. Harrison, Treasurer.*

In account with the Georgia Bar Association.

To balance May 27, 1920-----	\$1,404.89	
To dues collected since 5-27-'20----	2,610.00	
By Voucher No. 1, Orchestra -----		\$ 66.50
By Voucher No. 2, Hotel Tybee --		50.00
By Voucher No. 3, Prof. Pound---		150.00
By Voucher No. 4, Edwd. Crusselle		120.00
By Voucher No. 5, J. W. Burke Co.		142.56
By Voucher No. 6, Harry S. Strozier		43.28
By Voucher No. 7, Murray Prtg. Co.		29.32
By Voucher No. 8, Herald Pub. Co.		19.00
By Voucher No. 9, Byrd Prtg. Co._		52.10
By Voucher No. 10, Johnson-Dallis		
Co. -----		1,796.58
By Voucher No. 11, J. W. Burke Co.		11.00
By Voucher No. 12, Disc'nt on drafts		37.70
Discount on checks -----		15.50
Salary of Secretary -----		300.00
Salary of Treasurer-----		150.00
		<hr/>
		\$2,983.54
Cash balance June 2, 1921-----		1,031.35
		<hr/>
Examined and approved.	\$4,014.89	\$4,014.89
June 2nd, 1921.		

W. CARROLL LATIMER,  
Chairman Executive Committee.

## REPORT OF THE COMMITTEE ON LEGISLATION.

*To the Members of the Georgia Bar Association:*

The Committee on Legislation submits the following report:

The only matter referred to your committee was the suggested legislation to make clear, definite and certain the law respecting notice required to be given for the call for bond elections, confusion as to which had been brought about by the Act of 1916, and the subsequent amendment to the Constitution forbidding special registrations. A Bill was introduced and passed by the House of Representatives in 1919. It reached the Senate in 1920, where on account of pressure of other business and the failure of certain members of the Rules Committee to fully comprehend its terms it failed to be placed on the calendar and was never reached.

This Association has a number of times declared in favor of the repeal of the law electing judges by the people. While this committee was not so instructed, it nevertheless gave its influence toward the passage of a bill designed for that purpose. A bill was introduced in both branches of the General Assembly at the 1920 session. It was promptly killed in the House thus showing that the legislature has not yet awakened to this much needed reform in Georgia.

Respectfully submitted,

B. J. FOWLER, Chairman.

## REPORT OF THE COMMITTEE ON JURISPRUDENCE, LAW REFORM AND PROCEDURE.

*To the Georgia Bar Association:*

Your Committee on Jurisprudence, Law Reform and Procedure begs leave to submit the following report:

### I.

It has been held by the Court of Appeals and the Supreme Court, even as against a landlord, that ungathered crops, although matured, are a part of the realty. *Williams v. Mitchem*, 106 S. E. 284. This would seem to necessitate mortgages on crops to be witnessed as mortgages on realty and would prevent their foreclosure on ungathered crops as mortgages on personality, which has been generally the practice in the past. Your Committee recommends the enactment of a law that, in so far as landlords, judgment creditors and mortgages are concerned, growing crops, matured or unmatured, should be regarded as personality.

### II.

The general lien of the landlord dates from the time of its levy. Code, §3340. There seems to be no limitation on the foreclosure of such lien, except that applied to contracts, expressed or implied. The effect of this is to permit a landlord, negligently or collusively, to allow his rent to accumulate, possibly while other debts due him are being paid, for several years, and then levy his general lien on all the assets of his tenant, to the injury of the latter's general unsecured creditors who have innocently extended credit. Your Committee recommends that the general lien of a landlord should be invalid as to creditors unless the same be levied within twelve months from the date that such rent becomes due.\*

---

\* Mr. Jos. P. Brown does not concur in paragraph 2.

## III.

An unrecorded mortgage on a stock of goods, where the mortgagor remains in possession, is frequently an instrument of fraud which results in injury to creditors who extend credit on the faith of a mortgagor's possession of his stock unincumbered, although the records may have been examined to ascertain whether or not there are any liens against such stock. Even though bankruptcy intervenes, if the mortgage be recorded the day prior to bankruptcy, the mortgage is not avoided as a matter of law, because the bankruptcy law recognizes the validity of the liens of each state. Your Committee recommends a law should be enacted, that when a mortgage is given on a stock of goods changing in specifics and the mortgagor remains in possession, the same should be void as to existing or subsequent creditors unless the same be recorded within ten days from the date it is given.

## IV.

Bills of sale to secure debts and conditional bills of sale are in substance (though not in form) mortgages. It would simplify procedure to permit such to be foreclosed as mortgages on personalty as is now permissible in justice courts when the bill of sale is security for \$100.00 or less (Code, §3298) and your Committee recommends that a law should be enacted to that end.

## V.

A widow is not entitled to dower in lands of her deceased husband where he has borrowed money and given a security deed on the land to secure such loan. *McPhaul v. McPhaul*, 104 S. E. 241. Yet a widow is entitled to a year's support in such land, subject to the rights of the holder of the security deed. *Whatley v. Watters*, 136 Ga. 701. No sound reason (except the law as it now stands) exists for such distinction. Your Committee recommends the enactment of a law which would permit dower in land, under the circumstances stated, subject to the prior right of the holder of the security deed.

## VI.

It is frequently a most difficult matter for lawyers of great experience to determine whether or not to file exceptions *pendente lite* or to take the case by direct bill of exceptions to the Appellate Court. A litigant is thus unjustly, in some instances, deprived of the right to have his case determined. Your committee recommends the passage of a law which would make it mandatory upon the Appellate Courts to direct the filing of a bill of exceptions as exceptions *pendente lite* when such courts determine the latter should have been filed instead of the former.

## VII.

While the Appellate Courts have largely destroyed the efficacy of the so-called "Labor Contract Law" (Penal Code, §§715, 16), yet it is frequently used as a means of oppression by the swearing out of warrants thereunder even though no prosecution follows. The general statute against cheating and swindling (Penal Code, §719) would cover any aggravated case that would properly be embraced under its provisions. This conduces to the practice of peonage and your Committee recommends its repeal.\*\*

This May 1, 1921.

Respectfully submitted,

I. J. HOFMAYER, Chairman,  
 JOS. P. BROWN,  
 HEWLETT A. HALL,  
 C. E. SUTTON,  
 S. M. TURNER,  
 Committee.

---

\*\* Messers. Brown and Turner do not concur in paragraph 7.

## REPORT OF THE COMMITTEE ON INTERSTATE LAW.

Since all the States of the Union and all the people in the States have become associated in all their business relations, there are many subjects on which it is important that the laws should be uniform.

In order to bring about this uniformity and at the same time have the states preserve their autonomy, administer their own laws, instead of having Congress legislate on these subjects, and the Federal Courts administer these laws, the American Bar Association in the year 1889 inaugurated a movement to establish a National Conference of Commissioners on Uniform State Laws.

This culminated in the first meeting of Commissioners at Saratoga Springs, N. Y., for three days beginning August 24, 1892. Annual conferences have been held in each succeeding year, generally during the month of August, the last having been held in August 1920 at St. Louis, Mo.

In September, 1891, the General Assembly of the State of Georgia passed an act as follows:

*"Whereas*, The General Assembly of the State of New York has appointed a commission to confer with similar commissions of other States in reference to various subjects upon which uniformity in the laws of all the States is desirable, and has requested the legislature of other States to empower the Governor thereof to appoint such commissions;

*"Whereas*, In response to said action various other State legislatures have provided for the appointment of such commissions; therefore be it

*Resolved by the General Assembly of Georgia*, That the Governor is hereby authorized and requested to appoint a commissioner, or in his discretion, commissioners, not to exceed three in number, to confer and act with the commissioners of other States, appointed for the purpose of

suggesting provisions for uniformity of laws among the several States; provided, that the commissioner or commissioners appointed under this resolution shall serve without expense to the State."

Under this Georgia has had from one to three commissioners attending these conferences up to the present time. Hon. P. W. Meldrim, of Savannah, was one of the first appointed and has served continuously since. In 1913 Mr. T. A. Hammond, of Atlanta, and J. H. Merrill, of Thomasville, were appointed to fill vacancies caused by resignations. Except for the absence of one of them from one meeting, all of these three have been present at and participated in every meeting of the conference since 1913.

As indicated by the Act of the Legislature quoted above Georgia has never contributed one dollar to the conference or to her commissioners.

It is a labor of love with the commissioners, so they give their time and pay their own expenses without complaint, but it is rather mortifying that our State contributes nothing towards the thousands of dollars of the expenses of the conference, while nearly all the other states contribute to the expense of the conference and many of them pay the expenses of the commissioners.

The expenses are chiefly for printing, stenographers, committee meetings and experts' services. The American Bar Association itself has furnished the greater part of this money. Two or three times the Georgia Bar Association has contributed one hundred dollars to the fund.

What your committee would like is to arouse the interest of the people of Georgia in this matter and the necessity for this will be seen when we state that the first and most important act promulgated by the conference has been adopted by every state in the union except Georgia; and that Georgia has never adopted any one of them.

Some of the States regularly employ expert draughtsmen to put into proper shape all bills before their passage by the legislatures, harmonizing them with existing laws, and

making their meaning clear. It has occurred to us that if Georgia became interested in, and adopted some of the work of the Conference it might invest some three hundred a year in the work of the Conference for the help that the work of the Conference would be to the legislature, and such investment could properly be charged to the legislative department for which taxes may be levied under the Constitution.

We submit herewith the list of the acts which have been promulgated by the National Conference of Commissioners of Uniform State Laws with the list of States which have adopted them. We wish to call attention to the frequency with which Massachusetts, New York, Ohio, Illinois, Indiana, Wisconsin and Pennsylvania appear. These larger and more populous states have been at times quite eager in adopting these laws. We have had messages from them urging that we promulgate new laws which we had been working on as they were waiting to adopt them in the form in which we should put them out. The list was made up in the early part of 1920, and while we have no official reports since, there have probably been some of the other laws adopted in some of the other state than those named. The list we are furnishing was prepared by Mr. Justice Henry Stockbridge of the Supreme Court of Maryland who is now President of the Conference.

#### NEGOTIABLE INSTRUMENTS ACT.

Adopted by Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Dist. of Columbia, Alaska, Hawaii, Phillipine Islands.

## WAREHOUSE RECEIPTS ACT.

Adopted by Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Porto Rico, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming, Dist. of Columbia, Alaska, Phillipine Islands.

## BILLS OF LADING ACT.

Adopted by California, Connecticut, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, Alaska, Philippine Islands.

## SALES ACT.

Adopted by Arizona, Connecticut, Idaho, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Wisconsin, Wyoming, Alaska.

## STOCK TRANSFER ACT.

Adopted by Connecticut, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Wisconsin, Alaska.

## DIVORCE ACT.

Adopted by Delaware, New Jersey, Wisconsin.

## CHILD LABOR ACT.

Adopted by Kentucky, Massachusetts, Mississippi, Utah.

## FAMILY DESERTION ACT.

Adopted by Alabama, Kansas, Massachusetts, North Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, Wyoming.

**PROBATE OF FOREIGN WILLS ACT.**

Adopted by Maryland, Massachusetts, Michigan, Utah, Washington, Wisconsin, Alaska.

**MARRIAGE AND MARRIAGE LICENSE ACT.**

Adopted by Massachusetts, Wisconsin.

**MARRIAGE EVASION ACT.**

Adopted by Illinois, Louisiana, Massachusetts, Vermont, Wisconsin.

**FOREIGN ACKNOWLEDGMENTS ACT.**

Adopted by Louisiana, Maryland, Nevada, New Hampshire, Wisconsin.

**PARTNERSHIP ACT.**

Adopted by Idaho, Illinois, Maryland, Michigan, New Jersey, New York, Pennsylvania, Tennessee, Wisconsin, Wyoming, Alaska.

**COLD STORAGE ACT.**

Adopted by Illinois, Maryland, Tennessee, Utah, Wisconsin.

**WORKMEN'S COMPENSATION ACT.**

Adapted by Idaho, Indiana, Minnesota, Oregon.

**LAND REGISTRATION ACT. (Torrens System)**

Adopted by Utah, Virginia.

**FOREIGN PROBATE ACT.**

Adopted by Illinois, Louisiana, Nevada, Wisconsin.

**LIMITED PARTNERSHIP ACT.**

Adopted by Idaho, Illinois, Iowa, Maryland, Minnesota, New Jersey, Pennsylvania, Wisconsin, Alaska.

**EXTRADITION OF PERSONS OF UNSOUND MIND ACT.**

Adopted by Arizona, Illinois, Louisiana, Maine, Nevada, Tennessee, Wisconsin.

**FLAG ACT.**

Adopted by Arizona, Louisiana, Maine, Maryland, Washington, Wisconsin.

## FRAUDULENT CONVEYANCE ACT.

Adopted by Arizona, Delaware, New Hampshire, New Jersey, Tennessee, Texas, Wisconsin, Alaska.

## CONDITIONAL SALES ACT.

Adopted by Arizona, Delaware, New Jersey, South Dakota, Tennessee, Wisconsin.

Georgia did enact a law on the subject of registration of land titles and one on the subject of workmen's compensation, but neither one is in the form recommended by the National Conference, and while they may be as good laws and prove to be as satisfactory in the working, there is a distinct disadvantage in the want of harmony, because, the uniform law having been adopted in several states has been interpreted in many of them, and of course a record of this is in the Supreme Court decisions. Every lawyer knows the necessity of knowing what the courts think of any work of the legislature, and it is very helpful when we start off with a new law to have interpretations from the various courts of other states on that identical law.

The National Conference has not contented itself with promulgating these acts, but has had a committee getting the reports of the decisions rendered in the various states on these acts, and collating them for the benefit of the other courts, for the very good purpose of obtaining uniformity of decisions or interpretations of the acts as well as of the acts themselves.

Professor Charles Thaddeus Terry, of the New York City Bar and Columbia Law School, and for many years Chairman of the Board of Commissioners from New York State, has prepared and had published a volume giving all of the uniform state laws and the decisions rendered on them by the courts of last resort of the different states. This is a splendid work and was presented by Mr. Terry to the Conference without any charge whatever for his very valuable and extensive services in its preparation.

The advantage then of states adopting uniform laws includes having the interpretations of the various other states on them.

It will be interesting to know something of the personnel of the Commissioners on Uniform State Laws and of the work done on the acts they promulgate.

Among the Commissioners are Mr. Justice Thomas C. McClellan, of the Supreme Court of Alabama, Mr. Wm. A. Blount, of Florida, who is this year president of the American Bar Association, and was for three years president of the Conference; Mr. Justice Henry Stockbridge, of the Supreme Court of Maryland, who is at this time president of the Conference; Mr. Rome G. Brown, of Minnesota, a man who gained a national reputation in his great fight against recall of judges and judicial decisions and other kindred wild notions. Illinois sends as two of her representatives, Prof. John H. Wigmore, of the Northwestern University, who is the author of the greatest work on Evidence for some generations, and Prof. Ernst Freund, of the University of Chicago, likewise a distinguished legal author. Massachusetts sends Prof. Samuel Williston, of Harvard Law School. New York sends Charles Thaddeus Terry, of Columbia Law School, and who is also an active practitioner in New York City.

Pennsylvania sends two of her prominent Judges Wm. H. Staake and W. M. Hargest, and a distinguished practitioner at the Philadelphia bar, Walter George Smith, who was recently president of the American Bar Association, and who has done some very important work for this government in Europe.

Wisconsin sends Eugene A. Gilmore, of the University of Wisconsin.

Besides these distinguished educators and judges there are a number of others with more or less judicial experience, some members of Congress, some of State Legislatures, while the main body of the conference is made up of lawyers

in active practice, nearly all of whom might be described as middle-aged or older. It will be seen then that it is a body that can be counted on to be conservative.

The preparation of an Act to be offered to the States is after this manner:

When it is determined that a uniform law should be drafted on a particular subject, a committee is appointed of men who have a definite interest in the subject, and whose practice and experience has been along lines specially fitting them to deal with it. They select and employ some instructor from one of the great law schools of the country whose specialty embraces this subject, and have him draft a bill under certain general directions outlined to him. When this is completed the committee meets, considers and revises it and has it redrawn and printed and sent out to each member of the Conference some weeks in advance of the next annual meeting. At the meeting it is considered in committee of the whole, is generally very liberally amended, sometimes torn to shreds, and given back to the committee to draw another in accordance with the debates and votes, and to submit it at the next annual meeting. An interim meeting is held, the bill redrawn, republished and considered again at the next meeting. It may possibly be adopted at the second meeting but is more likely to go back again and yet again before being finally adopted and promulgated.

One of the finest things possible is the pleasant spirit in which a committee sees its work criticised, torn to shred, and given back to it to do the work all over again, perhaps on radically different lines from what the members of the committee approve.

We submit to Georgians that proposed laws thus carefully drawn, revised, and redrawn, by such a body of men are worthy of serious consideration, and that the enactment of them by our legislators would greatly improve the body of our laws in many other respects besides bringing us into line with the other States of the union.

The Acts are very full, going very much into detail, covering every question that can be thought of as likely to arise in its administration. This gives in the definite form of a statute, all in articles, the complete statement of the law on the subject, so that it can be read all together and understood by not only the lawyers, but any educated layman.

As against this we have on most subjects several provisions in several different parts of the Code, and then interpretations of these in several different volumes of the Supreme Court decisions, so that there is much labor required to find all the provisions of our laws on most subjects, and then much learning is needed to enable one to reconcile these different provisions, made at different times by different persons, and generally with only a part of the other provisions on the same subject before them. We will not say all, but certainly very much of the uncertainty about our laws, and the labor of finding what the law is, are eliminated by the comprehensive, harmonious and clear presentation of it in the Acts prepared by the National Conference.

As to the comprehensiveness of these Acts a fair idea may be got from the Workmen's Compensation Act passed by the Georgia legislature last summer, which is of the same character generally as the acts prepared by the National Conference.

The history of the efforts to have Uniform Laws adopted in Georgia should be of interest.

Several years ago the Chairman of the committee induced a friend in the legislature to introduce the Negotiable Instruments Act and got a hearing on it before the Judiciary Committee. After explaining the measure and its desirability at some length, a lawyer who was the dominant member of the Committee, said, "Well how does this differ from the law in Georgia?" I answered, "Scarcely at all." He said, "Then why enact it?" I said "Because you need to

look in many different parts of the Code and in some forty volumes of the Supreme Court Reports to find the law." He concluded the discussion and the hearing by saying, "Well, a good lawyer can find that out and I don't see any sense in making it easy for a poor one." This was the last of the bill in that legislature.

Another prominent member of the bar in discussing the matter with me once said, "I do not want Georgia laws to be the same as other states. If they were a New York lawyer could tell his client there what the law in Georgia was, while now he has to write to me or some other Georgia lawyer, to find out, and pay us part of his fee." It did not seem to occur to him that there were two sides to this proposition viewed from either angle, and that he might get as much benefit from uniformity as the lawyer in the other state. We feel that this attitude of the members of the bar is wrong, radically wrong, and indefensible because we believe it is as much the duty of lawyers to simplify the law and make it easy to be understood and to be enforced as it is the duty of the doctors of medicine to educate the public in matters of health and sanitation.

Your chairman has secured the introduction into both houses of both the last legislatures of the Negotiable Instruments Act and the Warehouse Receipts Act, and the explanation of their failure of passage given him by some of the friends of the Acts, was that some of the alleged third house lobbyists were incensed because the advocates of the uniform laws had not dropped into and aided their schemes. So until that bunch is killed off it seems there is little hope of securing the adoption of the laws.

We have narrated the above that the thinking, progressive people of the state may see what the obstacles are that must be overcome before Georgia can be put in line with her sister states. How very, very far behind Georgia is, is shown in the table of these acts and their adoption in other states set out above. Of course it is not desirable that the

laws of the different states should be uniform on all subjects.

On many subjects it is of no consequence whatever, but on other subjects it is very important. This is chiefly true of Commercial law, and the committee of the National Conference on commercial law has been very prolific in its work, and its work has been adopted extensively:—Negotiable Instruments in 47, Warehouse Receipts in 45, Sales of Personal Property in 23, Bills of Lading in 23, Stock Transfer in 14, and Partnership in 11 states.

It is very evident then that many of the states consider uniformity desirable, and while we believe in every individual doing his own thinking, we submit that some consideration at least should be given to such overwhelming manifestation as above shown of the opinion of others.

Some years ago as your chairman joined a friend on the street and took his arm asking him how he felt he replied, "I am very much better. Do you know I had got to thinking first one person and then another wrong in his views and conduct until I found that I was including nearly everybody in my criticisms, and then it occurred to me that as I was out of harmony with so many people that it must be I that was wrong instead of them, so I set myself about to get in harmony with them, and now as a consequence I feel very much better."

We commend this thought to those who control Georgia's legislative policy: Consider what other states have done towards adopting the uniform laws, and what Georgia has not done, and see if Georgia does not need to change her course in this respect, and attune herself to harmony with her Sister States.

Almost every big business concern in the country does business in several states. Certainty as to one's rights and responsibilities is one of the most important considerations in business. In determining in what states to engage in business the laws of the states must be considered. Surely

the preference would be given to those states having the same laws affecting that business as the state in which the home office was located, so that there would be no new laws to learn, no new problems to solve. For this reason the want of uniformity is a barrier keeping many business concerns out of the State.

Senator C. C. Pittman, of Cartesville, published an article in the Constitution giving details of the iniquitous villainy of that lobbying gang about the laws.

Let us hope a public sentiment against them, along with the thieves operating in Atlanta and murderers in other parts of the State, may be properly aroused and the whole infamous brood be swept into the penitentiary together that Georgia may hold her head up with justifiable pride, and take her proper place as a leader among the sisterhood of states.

J. HANSELL MERRILL, Chairman,  
JOHN J. STRICKLAND,  
of the Committee.

## REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

*To the President and Members of the Georgia Bar Association:*

Your Committee on Legal Education and Admission to the Bar believes that the greatest results in raising the standard of legal education of the Bar can be obtained by application at two points. It believes that the efforts of the Bar should be directed to every end that will improve the law schools of the State and that will raise the standards of admission to the Bar.

The most useful contribution that this Association can make to the law schools of Georgia at the present time is a constructive criticism of them. Nothing can be more helpful in raising standards than such criticism. In the past fifty years law schools of the United States as a whole and the methods of legal instruction in the United States have improved greatly. There is no reason to believe that an improvement equally as great will not take place in the next fifty years. Critical examination will contribute greatly to this.

Such an examination must come from a source that is impartial and authoritative. The Carnegie Foundation has undertaken such examinations in the past. The entire educational system including every institution from grammar schools through the Universities of at least one State is the subject of one such examination. At the present time the Carnegie Foundation is much interested in American legal education.

Improvement in the legal education of those who take Bar Examinations would mean a raising of the standard of those examinations and a raising of those standards would

react favorably on our law schools. The Bar should take the lead in securing all such profitable ends.

Your Committee recommends:

(1) That a constructive criticism of all the law schools of the State be secured from some recognized authority. The Carnegie Foundation is suggested for such an authority.

(2) That an Act of the Legislature be secured abolishing all admission to the Bar except on examination.

Respectfully submitted,

E. W. MOISE, Chairman.

## REPORT OF COMMITTEE ON LEGAL ETHICS AND GRIEVANCES.

### *To the Georgia Bar Association:*

Your Committee on Legal Ethics and Grievances herewith submits its report for the past year.

The complaints filed with the chairman of the committee have been as follows. None of them have been deemed of sufficient importance to have the entire committee consider them.

1. Complaint against a non-member of the Association for failure to remit certain alleged collections. Similar complaints have been made in the past about this same lawyer. The name and address of the Solicitor General of the circuit in which this lawyer lives was furnished to the complainant with the recommendation that proceedings be had criminally, with the explanation that the Association had no authority in the premises to punish this alleged delinquent.

2. A confused complaint against a non-member which seemed to complain that while an agreement had been made on the part of the debtor to settle an execution amounting to \$1400.00 for \$1000.00, that it developed that the execution had been transferred and it ultimately cost the debtor more than even the \$1400.00. This complaint came through Honorable Hal Lawson, of Abbeville. After explaining to him that the facts did not seem to be sufficiently developed to authorize action at this time, your Chairman offered to submit the entire matter to the Committee for consideration, if desired by the complainant. To this offer no reply was had.

3. A ridiculous complaint about not returning \$5.00 which had been deposited as costs and for services. It developed that the case had been tried in a Justice Court and

then before a Jury on Appeal and that the only amount paid out by the creditor was the aforesaid \$5.00.

4. Complaint from the Continental Jewelry Company of a failure to return certain jewelry. By the aid of Honorable J. W. Quincey, this was brought personally to the attention of the alleged delinquent who is not a citizen of Douglas, however, and resulted in the return of the jewelry.

5. Complaint by the C-R-C Law List Company of some failure to remit collections. Before your Chairman could get all the facts the complaint was withdrawn by telegraph.

6. Complaint by an organ company of failure to receive response from an attorney to whom the claim had been sent, accompanied with a statement from the debtor that the debt had been paid. This matter has only recently come to your Committee and is now being handled. The complaineer is not a member of our Association. The amount is probably very small, though it is not stated. Up to this time your Chairman has not been able to obtain a response from the complaineer.

7. Complaint against a non-member by the United States Fidelity & Guaranty Company, through its department of Guaranteed Attorneys that certain moneys had been collected and not accounted for and that no attention can be won from the complaineer. Your Chairman has been unable to obtain any response from this party, though he has invoked the aid of a member of the Association who lives near him. Inasmuch as the evidence seems to be well in hand in this matter and we can not inflict any punishment by dismissal from the Association, he being not a member, we recommend that a prosecution be instituted.

8. This complaint is also from the Department of Guaranteed Attorneys of the United States Fidelity & Guaranty Company. After repeated efforts on the part of your Chairman, a letter was received from this attorney who is a member of the Association on the 31st of May, enclosing copies of letters he had written about the various matters complained of, which indicated that he had sent checks

to cover and expressed a readiness to do everything that was right. We are not ready to report this as concluded because we do not know whether such checks were actually sent.

In all of the above complaints the amounts involved were quite small and in some instances it looked as if your Committee was being used as a collecting agency; however, we have attempted to give each complaint full consideration, independent of its origin.

WM. H. BARRETT, Chairman.

## REPORT OF THE PERMANENT COMMISSION ON REVISION OF THE JUDICIAL SYSTEM AND PROCEDURE IN THE COURTS.

*To the President and Members of the Georgia Bar Association:*

On March 17, 1921, the chairman addressed a letter containing a series of questions to the members of the Commission.

The first question was whether it was practicable to have a meeting of the Commission before the annual meeting. Two replied that it was and six that it was not. The chairman, therefore, called no meeting.

The next question was, if there should be no meeting, what should be the subject of a report to be prepared by the chairman. Five made no reply to this question. Two answered, a general review of the work of the Commission—one, a further discussion of the report to the last annual meeting—one, exceptions to charges as in Federal practise. The silence by five and the diversity of view by four constrained the conclusion by the chairman that for this year no special report should be made.

The last question was whether the Commission should be continued or dissolved and the work confided to it be taken over by the Standing Committee on Jurisprudence and Law Reform. Three replied that the Commission should be continued—three that it should be dissolved—one that unless interest in the work of the Commission could be revived it should be dissolved—one that if a plan of revision could not be agreed on and pressed, the Commission should be dissolved.

The chairman reports the result of his inquiries that the Association may take such action in reference to the continuance or dissolution of the Commission as may be in accord with the judgment of the Association.

Respectfully submitted,

ANDREW J. COBB, Chairman.

## REPORT OF THE COMMITTEE ON FEDERAL LEGISLATION.

*To the President and Members of the Georgia Bar Association:*

Your Committee on Federal Legislation was directed by the Secretary of this Association to be very brief in its report. Governed by this injunction we might with some degree of propriety report, in the language of a preceptor of one of the members of your Committee: "There are the books. The law is in them. Go to the source of learning. Do not ask me." Your Committee believes that the eminent preceptor did not know the answer to the question asked him. Therefore, in view of our little learning, we might, with all the more reason, adopt his response as our own.

At most we must content ourselves with the barest reference to Federal enactments of general interest and importance.

There have been certain minor amendments to the Federal Farm Loan Act.

The Civil Service Law was amended in important particulars to provide annuities for the Civil Service employees who have been retired because of age or who have become injured in the service.

The Act to deport certain undesirable aliens was made more embrative to reach various classes, including those aliens interned under certain war time proclamations of the President and those convicted under the emergency war time acts of Congress.

There has been considerable legislation regulating Indian affairs, for the encouragement of their industry and self support and for their education and betterment.

No new penal laws were passed. There were some

amendments to existing acts regulating the transportation of explosives and the mailing of poisons and explosives, and dealing with the circulation of obscene literature.

Congress dealt extensively with interstate commerce in 1920. The most radical change was the act terminating the Federal Control of railroads on March 1st, 1920. Following this was a great amount of legislation providing for such matters as the reimbursement of deficits, guaranty to the carriers, settlement of matters arising out of Federal Control, new loans to the railroads, and providing for the formation of the Railroad Labor Board with a delimitation of its powers and the establishment of rules of procedure.

A discussion of many of the enactments referred to was contained in the report of the Committee on Federal Legislation at the last meeting of this Association. Further comment at this time would be superfluous.

The most noteworthy legislation affecting the Postal Service was that authorizing the Postmaster General to establish the Aeroplane Mail Service, and that providing for a reclassification of the Post-masters and other employees of the service.

Regulations were passed designed to conserve the public lands and their natural resources, and there was a joint resolution giving ex-service men a preferred right of homestead entry.

In June 1920 what is generally known as the Jones Shipping Act was passed, providing for the maintenance of the Merchant Marine. It repealed certain emergency legislation, created changes in the duties of the Shipping Board and incorporated in itself the Ship Mortgage Act of 1920.

There were extensive amendments to the National Defense Act of 1916 (including the enactment of new articles of war in the place of former articles.) There were enactments providing for reimbursement for loss or destruction of private property of officers and men of the army while on duty.

An act reducing the authorized enlistment of the army

to 175,000 men was passed over the President's veto. The War Finance Corporation was revived over the President's veto in the last weeks of the Congressional session.

By joint resolution of March 3, 1921, the bulk of the war time legislation, with specified exceptions, was repealed.

Congress authorized the Secretary of War to provide for the burial of an unknown American private soldier in the Memorial Amphitheatre of the National Cemetery at Arlington, Va., and the President was authorized to bestow, with appropriate ceremonies, military and civil, the Congressional Medal of Honor upon the unknown, unidentified British soldier buried in Westminster Abbey, London, England, and upon the unknown, unidentified French Soldier buried in the Arc de Triomphe, Paris, France.

Respectfully submitted,

LANSING B. LEE,

ORVILLE A. PARK.

For the Committee.

**CONSTITUTION AND BY-LAWS**  
**OF**  
**THE GEORGIA BAR ASSOCIATION.**

Revised by Special Committee Appointed at the  
Annual Meeting of 1906.

Amended and adopted at the Twenty-fourth Annual Meeting,  
Tybee Island, May 30 and 31, 1907.

---

**CONSTITUTION.**

---

**ARTICLE I.**

The object of this Association shall be to advance the Science of Jurisprudence, promote the administration of Justice, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar.

This Association shall be known as the Georgia Bar Association.

**ARTICE II.**

All members of the bar of this State in good standing shall be eligible to membership in this Association.

The Governor, the Justices of the Supreme Court, Judges of the Court of Appeals, the Attorney General and the Judges of the Superior and City Courts of this State, and the Judges of the Federal Courts resident in this State, and the Clerks of the Supreme Court and of the Court of Appeals, shall, so long as they remain in office, be honorary members of this Association, with all the rights and privileges of regular members without liability for dues.

**ARTICLE III.**

The officers of this Association shall consist of a President,

one Vice-President from each Congressional District of the State, a Secretary and a Treasurer. One of the Vice-Presidents, when nominated and elected, shall be designated as First Vice-President, who shall succeed the President in the event of a vacancy in that office by reason of death, disability, resignation or other cause. (As amended on June 7, 1918. See Report 1918, pp. 12-14.)

There shall also be an Executive Committee composed of the President, Secretary, Treasurer and four members to be chosen by the Association, one of whom shall be Chairman of the Committee.

These officers and the members of this Committee shall be elected at each annual meeting for the ensuing year; but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers and members of the Executive Committee so elected shall hold office from the adjournment of the meeting at which they are elected until the adjournment of the next succeeding annual meeting, and until their successors are elected and qualified according to the Constitution and By-Laws.

#### ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association upon the recommendation of the Executive Committee. All elections for members shall be by ballot. Five negative votes shall suffice to defeat an election to membership.

Except during the meetings of the Association, the Executive Committee shall have power to elect members of this Association.

#### ARTICLE V.

Each member shall pay five dollars (\$5.00) to the Treasurer as annual dues. Payment thereof shall be enforced as may be provided by the By-Laws.

#### ARTICLE VI.

By-Laws may be adopted, repealed or amended at any

annual meeting of the Association, by a majority vote of the members present; provided, that the number voting for such amendment shall not be less than twenty-five.

#### ARTICLE VII.

The following committees shall be appointed by the President all annually, except the Committee on Legal Ethics and Grievances, which shall be appointed quinquennially.

1. On Legislation.
2. On Jurisprudence, Law Reform, and Procedure.
3. On Federal Legislation.
4. On Interstate Law.
5. On Legal Education and Admission to the Bar.
6. On Legal Ethics and Grievances.
7. On Membership.
8. On Memorials.
9. On Reception.

(As amended May 30, 1919. See Report 1918, pp. 19-21, 26, 27, and Report 1919, pp. 24, 144.)

#### ARTICLE VIII.

A vacancy in any office or committee provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until a successor committee shall have been appointed. (As amended May 30, 1919. See Report 1918, pp. 19-21, 26, 27; Report 1919, pp. 25, 145.)

#### ARTICLE IX.

The Executive Committee, when the Association is not in session, shall be invested with all the powers of the Association needful to be exercised and not inconsistent with the Constitution and By-Laws of the Association.

#### ARTICLE X.

This Association shall meet annually at such time and place as the Executive Committee shall select, and those present at such meeting, not less than twenty-five, shall constitute a quorum. The Secretary shall give thirty days' notice of the time and place of the meeting.

## ARTICLE XI.

Any member of this Association may be suspended or expelled for misconduct in his relation to this Association or in his profession, on conviction thereof in such manner as may be provided by the By-Laws.

## ARTICLE XII.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made except upon the concurrent vote of at least thirty members.

## ARTICLE XIII.

At the regular meetings of this Association the accredited representatives of the respective local bar associations upon the basis of one delegate from each association, and one additional delegate for each ten members above the five necessary to organize, shall be entitled to all the privileges of regular members during such meetings except that they shall be denied the right to vote unless they are members of this Association. (Adopted June 4, 1909. See Report 1909, p. 45.)

## ARTICLE XIV.

There shall be published in the annual report of the proceedings of this Association a list of all local associations in this State which may be affiliated with this Association, showing the name, location, officers and number of members of such associations and the delegates selected to represent such local associations at the annual meeting of this Association, with such other facts regarding said association as the Executive Committee may from time to time see fit to publish. (Adopted June 4, 1909. See Report 1909, p. 45.)

## BY-LAWS.

## ARTICLE I.

The President shall preside at all the meetings of the Association, and shall deliver an annual address. (Amended 1921. See this Report, p. 38.)

The President shall be a member of the General Council of the American Bar Association, provided he be a member of the American Bar Association. (Adopted May 31st, 1917. See Report 1917, pp. 15, 16, 46, 47.)

In case of his absence, one of the Vice-Presidents shall preside.

It shall be the duty of the Vice-Presidents to promote in whatever way possible the interests of the Association by the members of the bar in their respective districts, and they shall assist particularly the Executive Committee and the Membership Committee of the Association, whenever called upon by them so to do. (Adopted June 7th, 1918. See Report 1918, pp. 12-14.)

## ARTICLE II.

The Secretary shall keep a record of all meetings of the Association, and of all matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association. He shall notify the officers and members of their election, shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be three hundred dollars (\$300.00) *per annum*.

The Secretary shall be a member *ex officio* of the Local Council for Georgia of the American Bar Association, provided he be a member of the American Bar Association. (Adopted May 31st, 1917. See Report 1917, pp. 15, 16, 46, 47.)

## ARTICLE III.

The Treasurer shall collect, and under the direction of the Executive Committee, disburse all funds of the Association. He shall report annually, and oftener if required. He shall keep regular accounts, which shall at all times be open to the inspection of members of the Association. His accounts shall be audited by the Executive Committee. He shall execute a bond with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of two thousand dollars (\$2,000.00) for the

use of the Association, and conditioned that he will well and faithfully perform the duties of the office. The cost of this bond shall be paid by the Association. The Treasurer's salary shall be one hundred and fifty dollars (\$150.00) *per annum*.

#### ARTICLE IV.

The Executive Committee shall meet upon the call of the Chairman. They shall arrange the program for the annual meetings and make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, and shall report at the annual meeting of the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same.

#### ARTICLE V.

At each annual, stated or adjourned meeting of the Association the order of business shall be prescribed by the Executive Committee, except as provided in these By-Laws. This order of business may be changed by the vote of a majority of the members present.

#### ARTICLE VI.

All applications for membership in the Association shall be in writing, signed by the applicant, and addressed to the Executive Committee. The application shall be endorsed by a member of the Association, and shall be accompanied by the first year's dues.

#### ARTICLE VII.

In pursuance of Article VII of the Constitution, there shall be the following standing committees:

1. A Committee on Legislation, consisting of three members, to be appointed by the President during the session of the Association. This committee shall prepare for legislative

action such matters requiring legislation as may have received the approval of the Association. It shall further be the duty of this committee to make due presentation of such proposed legislation to the appropriate legislative committee or bodies.

2. A Committee on Jurisprudence, Law Reform, and Procedure, who shall be charged with the duty of reporting such amendments of the law as in their opinion should be adopted and of scrutinizing all proposed changes in the law, and when necessary reporting upon the same. It shall also be the duty of this committee to observe the practical working of the judicial system of this State and recommend such changes therein as observation or experience may suggest.

3. A Committee on Federal Legislation, who shall be charged with the duty of reporting upon such Federal Legislation proposed or enacted as may be of interest to the legal profession, and especially such as affects the Federal judicial system, procedure and practice in the Federal Courts.

4. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest.

5. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes are expedient in the system and mode of legal education, and of admission to the practice of the profession in the State of Georgia.

6. A Committee on Legal Ethics and Grievances, who shall be charged with the duty of considering and reporting upon matters relating to the ethics of the profession, and of taking such action as the Association may direct, in case of departure from these principles by any member of the Georgia Bar, and of hearing all complaints which may be made in matters affecting the interest of the legal profession or the professional conduct of any member of the Georgia Bar, or the administration of justice, and reporting the same to the Asso-

ciation, with such recommendations as they may deem advisable. Said Committee shall, on behalf of the Association, institute and carry on such proceedings against such offenders and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of the funds of the Association. (As amended June 2, 1917.)

7. A Committee on Membership, who shall take such action as may be best in their judgment to increase the membership of the Association.

8. A Committee on Memorials, who shall prepare and furnish to the Secretary brief, appropriate notices of members who have died during the year preceding each annual meeting, such notices not to exceed one page of printed matter and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of some deceased member of the bench or bar of Georgia, having special reference to his professional career, and have the same presented at the annual meeting.

9. A Committee on Reception, who shall be charged with the duty at all meetings of the Association of promoting social intercourse and fraternity among the members.

#### ARTICLE VIII.

Each of the standing committees, except the Committee on Legislation, shall consist of five members, and shall be appointed annually, except the Committee on Legal Ethics and Grievances, which shall be appointed quinquennially by the President of the Association, and a list thereof and of all special committees shall be transmitted by the President to the Secretary within thirty days from the adjournment of each annual meeting. The Secretary shall within thirty days after receipt thereof from the President, notify each committeeman of his appointment, giving a full list of his committee. (As amended May 30, 1919. See Report 1918, pp. 19-21, 26, 27, and Report 1919, pp. 24, 144.)

## ARTICLE IX.

The Standing Committee on Jurisprudence, Law Reform, and Procedure, shall furnish the Secretary, at least thirty days before each annual meeting, with a draft of their report, which is to be submitted at the meeting. The Secretary shall on receipt of said report, have the same printed and distributed to the members of the Association at least ten days before the date fixed for the annual meeting.

## ARTICLE X.

No complaint of misconduct against any member of this Association or against any member of the bar shall be entertained by the Committee on Legal Ethics and Grievances unless presented in writing, subscribed by the person or persons complaining, plainly stating the matter complained of with particulars of time, place and circumstances. The Committee may authorize its chairman, should he consider the matter as presented not of sufficient gravity or apparent verity to call for consideration by the entire Committee, to institute preliminary investigation, and if upon such investigation the complaint seems without merit it need not then be submitted to the Committee. But upon the request of any member of the Committee, the Chairman shall submit to the Committee all facts coming to him in connection with such complaint and shall in any event submit to the entire Committee at each annual meeting of the Association a complete report of his acts in connection with each complaint not submitted to the Committee. The Committee shall be authorized to appoint a local or sub-committee from the vicinity of the residence of any member of the bar against whom complaint is made, said local or sub-committee being composed of lawyers of good repute, regardless of whether they are members of this Association or not, who shall investigate the facts, confer with the respondent, and report to the Chairman.

When any complaint is submitted to the Committee, if the matters therein mentioned are deemed of sufficient importance and the complaint is against a member of the Association, a

copy of the complaint together with a notice of not less than ten days of the time and place when the Committee will meet for the consideration thereof shall be served on the member complained of, either personally or by leaving the same at his office during office hours properly addressed to him.

If after hearing his explanation the Committee shall deem it proper that there be a trial of the charge, they shall cause similar notice of ten days of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as nearly as may be to the provisions of Sections 4969 to 4973, inclusive, of the Civil Code of Georgia of 1910. Should the Committee conclude that it is its duty to institute prosecution against the party complained of, such prosecution shall be instituted by it and all expenses incurred shall be borne by the Association.

If the Committee is of the opinion that such member should be dismissed from the Association or other disciplinary action taken, it shall report the same to the Association with its recommendation, giving to the defendant notice in writing of the intended report at least twenty days before the next meeting of the Association. Such defendant shall have the right to demand a hearing by the Association, provided that he shall within five days after the receipt of the notice of such report, furnish to the Chairman of the Grievance Committee a copy in writing of what will be his demand upon the Association.

If the complaint be against a lawyer not a member of the Association, the Committee may make such investigation as it deems proper, and may invite the party complained of to appear before it, though this is not mandatory. Said Committee shall have full authority to institute prosecution against the party complained of and all expenses of such prosecution shall be paid by the Association. (Adopted May 30, 1919. See Report 1918, pp. 19-21, 26, 27, and Report 1919 pp. 24, 144.)

#### ARTICLE XI.

The Treasurer is authorized to pay the actual expenses of

the members of the Executive and other standing committees of the Association in attending meetings called by the chairmen of the respective committees upon the rendition to the Treasurer of an itemized account of such expenses, approved by the chairman.

#### ARTICLE XII.

A part of the order of business of the first day of the annual meeting of the Association shall be the election of a committee on Nominations, consisting of five members, who shall be charged with the duty of reporting to the Association during the second day's session thereof, nominations for the officers of the Association, and members of the Executive Committee, to be selected at that meeting, but nothing herein provided shall prevent nominations of candidates to fill the respective offices, to be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name.

All elections, whether to office or to membership, shall be by ballot, and a majority of the votes cast shall be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

#### ARTICLE XIII.

The dues of the Association shall be payable on or before the first day of May for each year, and any member failing to pay his dues shall be in default, and if such default continues for three years, the name of such member shall be stricken from the roll of membership. Applications for reinstatement may be made and granted on such terms as may be deemed best by the Executive Committee.

The Treasurer shall on the 15th day of April of each year, inform each member of the Association that on the first day of May next, the Treasurer will draw at sight on said member for the amount due by him to the Association, and on the first day of May following, the Treasurer shall so draw for such dues upon each and every member of the Association who may at that time be indebted to the Association.

## ARTICLE XIV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

## ARTICLE XV.

Whenever an active member of the Association shall, by reason of his election or appointment, become an honorary member *ex officio*, as provided by the Constitution, the Secretary shall transfer the name of such member from the roll of active members to the roll of honorary members, and shall re-transfer the name to the active roll when such member shall no longer be entitled to honorary membership.

## ARTICLE XVI.

If the Executive Committee shall determine that it is necessary for the Association to hold any meeting other than the annual meeting, during the year, the same shall be held at such time and place as the Executive Committee may fix, notice of which shall be given by the Secretary.

## ARTICLE XVII.

All addresses, reports and other papers read at any meeting of the Association shall be transmitted to the Secretary within thirty days from the adjournment of such meeting, and if not so furnished, the Executive Committee will proceed to publish the proceedings without such papers.

## ARTICLE XVIII.

No resolution complimentary to any paper or address or to any member or officer shall be entertained.

## ARTICLE XIX.

Whenever any member of this Association shall have been disbarred by the final judgment of a court, he shall *ipso facto*

cease to be a member of this Association, and the Secretary shall notify him that his name has been dropped from the roll. (Adopted May 30, 1912. See Report of 1912, pp. 9-13.)

### RESOLUTIONS ADOPTED JULY 2, 1905.

WHEREAS, It is desirable to have as large an attendance as practicable of the lawyers of the State upon the annual sessions of this Association; and,

WHEREAS, Many members of the bar of the State are prevented from attending the annual convention by reason of the fact that many of the courts of the State are in session at the time of the meeting of the Bar Association; therefore, be it

*Resolved, first,* That the judges of the several courts of this State be, and they are, hereby respectfully requested to so arrange their calendars and terms of court as that the members of the bar of the several courts of the State may have an opportunity to attend the annual sessions of this Association.

*Resolved, second,* That as soon as the Executive Committee of this Association decides upon the time and place of meeting of this Association, each year, the Secretary of this Association shall as early as practicable thereafter notify each of the judges of the several courts of the State of the time and place of meeting of the Association, and respectfully urge a compliance with the above request.

OFFICERS AND COMMITTEES  
OF  
THE GEORGIA BAR ASSOCIATION  
FOR 1921-1922.

*President*

ARTHUR G. POWELL, Atlanta.

*First Vice-President*

J. R. POTTLE, Albany.

*Vice-Presidents for Congressional Districts*

First—J. R. BRANNEN .....	Statesboro
Second—J. R. POTTLE .....	Albany
Third—JNO. B. GUERRY .....	Montezuma
Fourth—H. H. SWIFT .....	Columbus
Fifth—HUGHES SPALDING .....	Atlanta
Sixth—R. C. JORDAN .....	Macon
Seventh—BARRY WRIGHT .....	Rome
Eighth—Z. B. ROGERS .....	Elberton
Ninth—W. A. CHARTERS .....	Gainesville
Tenth—LANSING B. LEE .....	Augusta
Eleventh—JNO. W. BENNET .....	Waycross
Twelfth—JNO. S. ADAMS .....	Dublin

*Treasurer*

Z. D. HARRISON, Atlanta.

*Secretary*

HARRY S. STROZIER, Macon

EXECUTIVE COMMITTEE.

Walter A. Harris, Chairman .....	Macon
Raiford Falligant .....	Savannah
Hal Lawson .....	Abbeville
Alex. W. Smith, Jr. ....	Atlanta
The President, the Secretary and the Treasurer, <i>ex officio</i> .	

## STANDING COMMITTEES.

## LEGISLATION.

B. J. Fowler, Chairman	-----	Macon
Raiford Falligant	-----	Savannah
A. H. Thomson	-----	LaGrange

## JURISPRUDENCE, LAW REFORM, AND PROCEDURE.

W. Carroll Latimer, Chairman	-----	Atlanta
H. F. Lawson	-----	Hawkinsville
John B. Harris	-----	Macon
T. S. Hawes	-----	Bainbridge
L. W. Branch	-----	Quitman

## FEDERAL LEGISLATION.

G. E. Maddox, Chairman	-----	Rome
J. T. Vocelle	-----	St. Mary's
S. N. Gazan,	-----	Savannah
Robt. C. Ellis	-----	Tifton
Claud Bond	-----	Toccoa

## INTERSTATE LAW.

Archibald H. Blackshear, Chairman	-----	Augusta
R. B. Russell, Jr.,	-----	Winder
Shepard Bryan	-----	Atlanta
E. K. Wilcox	-----	Valdosta
W. H. Connor	-----	Griffin

## LEGAL EDUCATION AND ADMISSION TO THE BAR.

Warren Grice, Chairman	-----	Macon
Hamilton Douglas	-----	Atlanta
Sylvanus Morris	-----	Athens
R. O. Jones	-----	Newnan
J. D. Blalock	-----	Waycross

## MEMBERSHIP.

Rollin H. Kimball, Chairman	-----	Winder
Max Isaac	-----	Brunswick

Thos. H. Milner .....	Albany
Morris H. Bernstein .....	Savannah
Walter S. Dillon .....	Atlanta

## RECEPTION.

A. R. Lawton, Chairman .....	Savannah
I. J. Hofmayer .....	Albany
A. W. Cozart .....	Columbus

## MEMORIALS.

Wright Willingham, Chairman .....	Rome
Warren B. Parks .....	Dawson
A. J. Perryman, Jr. ....	Talbotton
H. A. Peacock .....	Albany
C. C. Bunn, Jr. ....	Cedartown

## LEGAL ETHICS AND GRIEVANCES (5-Year Committee).

W. H. Barrett, Chairman .....	Augusta
A. R. Lawton .....	Savannah
J. R. Pottle .....	Albany
Lamar Rucker .....	Athens
Erwin Sibley .....	Milledgeville

## DELEGATES TO THE AMERICAN BAR ASSOCIATION.

Warren Grice .....	Macon
T. A. Hammond .....	Atlanta
Harry S. Strozier .....	Macon

DELEGATES TO THE CONFERENCE OF REPRESENTATIVES  
FROM STATE AND LOCAL BAR ASSOCIATIONS.

T. A. Hammond .....	Atlanta
J. H. Merrill .....	Thomasville
Orville A. Park .....	Macon

PERMANENT COMMISSION ON THE REVISION OF THE  
JUDICIAL SYSTEM AND PROCEDURE IN THE COURTS.

Andrew J. Cobb, Chairman .....	Athens
Orville A. Park .....	Macon

J. H. Merrill	Thomasville
P. W. Meldrim	Savannah
W. K. Miller	Augusta
Arthur G. Powell	Atlanta
T. S. Felder	Macon
Samuel H. Sibley	Marietta
Wright Willingham	Rome
Alex. W. Smith	Atlanta

## SPECIAL COMMITTEES.

COMMITTEE ON MEMORIAL TO ALEXANDER H. STEPHENS  
IN HALL OF FAME.

A. L. Henson, Chairman	Calhoun
Carroll D. Colley	Washington
F. T. Saussy	Savannah
Thomas H. Shanks	Columbus
A. L. Franklin	Augusta

## COMMITTEE ON UNITED STATES COURTS IN GEORGIA.

H. H. Swift, Chairman	Columbus
C. G. Edwards	Savannah
Sam S. Bennet	Albany
M. J. Yeomans	Dawson
L. Z. Rosser	Atlanta
C. L. Bartlett	Macon
Barry Wright	Rome
Albert G. Foster	Madison
W. A. Charters	Gainesville
John T. West	Thomson
Jno. W. Bennet	Waycross
A. S. Bradley	Swainsboro

OFFICERS  
OF  
THE AMERICAN BAR ASSOCIATION  
1921-1922

*President*

C. A. SEVERANCE, 1512 Merchants National Bank Bldg.,  
St. Paul, Minn.

*Secretary*

W. THOMAS KEMP, 901 Maryland Trust Bldg.,  
Baltimore, Md.

*Treasurer*

FREDERICK E. WADHAMS, 78 Chapel St., Albany, N. Y.

*Vice-President for Georgia*

ALEXANDER R. LAWTON, Savannah.

*Member of General Council for Georgia:*

THEODORE A. HAMMOND, Atlanta.

*Local Council for Georgia:*

ORVILLE A. PARK, Macon,  
LUTHER Z. ROSSER, Atlanta,  
HARRY S. STROZIER, Macon,  
W. H. BARRETT, Augusta.

# MEMBERS OF GEORGIA BAR ASSOCIATION WHO ARE MEMBERS OF AMERICAN BAR ASSOCIATION.

Adams, Samuel B., Savannah	Gordon, William W., Savannah
Alston, R. C., Atlanta	Grice, Warren, Macon
Arnold, Reuben R., Atlanta	Gueerry, J. B., Montezuma
Barrett, Wm. H., Augusta	Hall, C. H., Macon
Bartlett, Chas. L., Macon	Hammond, Theodore A., Atlanta
Battle, C. E., Columbus	Hargrett, Haines, Tifton
Bell, R. C., Cairo	Harris, John B., Macon
Bennet, John W., Waycross	Harris, Walter A., Macon
Bennet, Jos. W., Brunswick	Hawes, T. S., Bainbridge
Bennet, Sam S., Albany	Heywood, Geo. C., Savannah
Black, Eugene R., Atlanta	Higdon T. B., Atlanta
Bradwell, J. D., Athens	Hirsch, Harold, Atlanta
Branch, Lee W., Quitman	Hofmayer, I. J., Albany
Brandon, Morris, Atlanta	Hopkins, Stiles, Atlanta
Bryan, Shepard, Atlanta	Howard, Wm. M., Augusta
Burch, J. E., Dublin	Howell, Albert, Atlanta
Butts, Eustace C., Brunswick	Hull, James M., Jr., Augusta
Camp, R. Earl, Dublin	Hynds, John A., Atlanta
Candler, Asa W., Atlanta	Irvin, I. T., Jr., Washington
Candler, Jno. S., Atlanta	Johnson, Henry Wiley, Savannah
Cann, J. Ferris, Savannah	Johnson, Paul E., Atlanta
Chastain, Edward S., Atlanta	Jones, George S., Macon
Chipley, Hunt, Atlanta	Jones, Harrison, Atlanta
Clay, William Law, Savannah	Jones, Malcom D., Macon
Cobb, Andrew J., Athens	Jones, Robert P., Atlanta
Colquitt, W. T., Atlanta	Jones, W. P., Atlanta
Cornett, W. S., Athens	King, Alexander C., Atlanta
Crovatt, A. J., Brunswick	Kontz, Ernest C., Atlanta
Crum, D. A. R., Cordele	Latimer, W. Carroll, Atlanta
Cunningham, T. M., Jr., Savannah	Lawrence, Alexander A., Savannah
Custer, W. V., Bainbridge	Lawson, Hal, Abbeville
Dykes, W. W., Americus	Lawson, Harley F., Hawkinsville
Ellis, G. R., Americus	Lawton, Alexander R., Savannah
Fish, William H., Atlanta	Lawton, A. R., Jr., Savannah
Flynt, Roger D., Dublin	Lovett, A. B., Savannah
Fortson, Blanton, Athens	Lumpkin, E. K., Athens
Fortson, B. W., Arlington	Luke, Roscoe, Atlanta
Fulwood, C. W., Tifton	MacIntyre, Wm. I., Thomasville
Gamble, Jno. B., Athens	Mackall, Wm. W., Savannah
Gignilliatt, Wm. R., Savannah	Maddox, George E., Rome
Goetchius, Henry R., Columbus	Mayer, Albert E., Atlanta

- McDaniel, Sanders, Atlanta  
 McDuffie, P. C., Atlanta  
 McWhorter, Hamilton, Athens  
 Meldrim, Peter W., Savannah  
 Merrill, Jos. Hansell, Thomasville  
 Miller, A. L., Macon  
 Miller, Wallace, Macon  
 Oliver Frank M., Savannah  
 Moon, E. T., LaGrange  
 Morris, Sylvanus, Athens  
 O'Byrne, M. A., Savannah  
 Orme, A. J., Atlanta  
 Owens, Geo. W., Savannah  
 Palmer, H. E. W., Atlanta  
 Park, Orville A., Macon  
 Parker, D. M., Waycross  
 Parker, R. S., Atlanta  
 Payton, Claude, Sylvester  
 Peeples, Henry C., Atlanta  
 Phillips, B. Z., Atlanta  
 Phillips, J. R., Louisville  
 Phillips, W. L., Louisville  
 Pope, Jeff A., Cairo  
 Pope, John D., Albany  
 Porter, J. H., Atlanta  
 Pottle, J. R., Albany  
 Powell, Arthur Gray, Atlanta  
 Randolph, Hollins N., Atlanta  
 Reed, Harry D., Waycross  
 Reese, Millard, Brunswick  
 Rivers, E. D., Milltown  
 Rogers, Z. B., Elberton  
 Rosser, Luther Z., Atlanta  
 Rourke, John, Jr., Savannah  
 Russell, R. B., Winder  
 Seabrook, Paul E., Savannah  
 Shattuck, Norman, LaFayette  
 Sibley, Jno. A., Atlanta  
 Slade, L. C., Columbus  
 Sibley, S. H., Union Point  
 Slaton, John M., Atlanta  
 Smith, Alexander W., Sr., Atlanta  
 Smith, John R. L., Macon  
 Smith, Marion, Atlanta  
 Smith, Victor Lamar, Atlanta  
 Spalding, Hughes, Atlanta  
 Stephens, William B., Savannah  
 Stevens, Alex. W., Atlanta  
 Stevenson, W. A., Commerce  
 Strickland, John J., Athens  
 Strozier, Harry S., Macon  
 Swift, H. H., Columbus  
 Thompson, A. H., LaGrange  
 Thomson, W. D., Atlanta  
 Twitty, F. E., Brunswick  
 Tye, Benjamin W., Atlanta  
 Tye, John L., Atlanta  
 Tyson, Charles M., Darien  
 Watkins, Edgar, Atlanta  
 Webb, G. C., Americus  
 Wilkinson, H. A., Dawson  
 Willingham, Wright, Rome  
 Wright, Barry, Rome  
 Yeomans, M. J., Dawson

## LOCAL BAR ASSOCIATIONS IN GEORGIA.

<i>President</i>		<i>Secretary</i>
John D. Pope	Albany Bar Association.	R. H. Ferrell
E. A. Nisbet	Americus Bar Association.	Hollis Fort
Thos. F. Green	Athens Bar Association.	Jerome Michael
Arthur G. Powell	Atlanta Bar Association.	Robert Parker
J. C. C. Black	Augusta Bar Association.	Jas. E. Harper
Jos. W. Bennet	Brunswick Bar Association.	Eustace C. Butts
J. L. Willis	Columbus Bar Association.	Paul Blanchard
E. F. Strozier	Crisp County Bar Association.	J. Gordon Jones
R. G. Hartsfield	Decatur County Bar Association.	E. A. Wimberly
Ira A. Chappel	Dublin Bar Association.	J. B. Green
Jos. P. Brown	Greene County Bar Association.	Wm. H. Fisher
Roland Ellis	Macon Bar Association.	McKibben Lane
Robt. L. Shipp	Moultrie Bar Association.	T. H. Parker
Jas. M. Rogers	Savannah Bar Association.	Jno. G. Kennedy
J. Hansell Merrill	Thomas County Bar Association.	J. E. Craigmiles
J. L. Sweat	Waycross Bar Association.	Harry D. Reed

## ROLL OF GEORGIA BAR ASSOCIATION 1921-1922

### HONORARY LIFE MEMBERS.

Hon. David C. Barrow, Chancellor of the University of Georgia	Athens
Mrs. Joseph R. Lamar	Atlanta
Hon. Z. D. Harrison	Atlanta

### HONORARY MEMBERS.

Hon. T. W. Hardwick, Governor of Georgia	Atlanta
Hon. George M. Napier, Attorney-General	Atlanta

---

### JUSTICES OF THE SUPREME COURT.

Hon. William H. Fish, Chief Justice	Atlanta
Hon. Marcus W. Beck, Presiding Justice	Atlanta
Hon. Samuel C. Atkinson, Associate Justice	Atlanta
Hon. Hiram Warner Hill, Associate Justice	Atlanta
Hon. Price Gilbert, Associate Justice	Atlanta
Hon. James K. Hines, Associate Justice	Atlanta

---

### JUDGES OF THE COURT OF APPEALS.

Hon. Nash R. Broyles, Chief Judge	Atlanta
Hon. W. F. Jenkins, Presiding Judge	Atlanta
Hon. Roscoe Luke, Judge	Atlanta
Hon. O. H. B. Bloodworth, Judge	Atlanta
Hon. Alex. W. Stephens, Judge	Atlanta
Hon. B. H. Hill, Judge	Atlanta

---

Hon. Logan Bleckley, Clerk Court of Appeals	Atlanta
---	---------

---

### UNITED STATES JUDGES RESIDENT IN GEORGIA.

Hon. Samuel H. Sibley, Judge Northern District	Atlanta
Hon. Alex. C. King, Circuit Court Judge	Atlanta
Hon. Beverly D. Evans, Judge Southern District	Savannah

## JUDGES OF THE SUPERIOR COURTS.

CIRCUIT.	JUDGE.	RESIDENCE.
Alapaha-----	Hon. R. S. Dickerson-----	Homerville
Albany-----	Hon. R. C. Bell-----	Cairo
Atlanta-----	Hon. John T. Pendleton-----	Atlanta
Atlanta-----	Hon. W. D. Ellis-----	Atlanta
Atlanta-----	Hon. Geo. L. Bell-----	Atlanta
Atlanta-----	Hon. John D. Humphries-----	Atlanta
Atlantic-----	Hon. Walter W. Sheppard-----	Savannah
Augusta-----	Hon. Henry C. Hammond-----	Augusta
Blue Ridge-----	Hon. D. W. Blair-----	Marietta
Brunswick-----	Hon. J. P. Highsmith-----	Baxley
Chattahoochee-----	Hon. Geo. P. Munro-----	Columbus
Cherokee-----	Hon. M. C. Tarver-----	Dalton
Cordele-----	Hon. O. T. Gower-----	Cordele
Coweta-----	Hon. C. E. Roop-----	Carrollton
Dublin-----	Hon. J. L. Kent-----	Wrightsville
Eastern-----	Hon. Peter W. Meldrim-----	Savannah
Flint-----	Hon. W. E. H. Searcy, Jr.-----	Griffin
Macon-----	Hon. H. A. Mathews-----	Fort Valley
Macon-----	Hon. Malcom D. Jones-----	Macon
Middle-----	Hon. R. N. Hardeman-----	Louisville
Northeastern-----	Hon. J. B. Jones-----	Gainesville
Northern-----	Hon. Walter L. Hodges-----	Hartwell
Ocmulgee-----	Hon. James B. Park-----	Greensboro
Oconee-----	Hon. Eschol Graham-----	McRae
Ogeechee-----	Hon. Henry B. Strange-----	Statesboro
Pataula-----	Hon. William C. Worrill-----	Cuthbert
Rome-----	Hon. Moses Wright-----	Rome
Southern-----	Hon. William E. Thomas-----	Valdosta
Southwestern-----	Hon. Zera A. Littlejohn-----	Americus
Stone Mountain-----	Hon. John B. Hutcheson-----	Jonesboro
Tallapoosa-----	Hon. Frank A. Irwin-----	Cedartown
Tifton-----	Hon. R. Eve-----	Tifton
Toombs-----	Hon. E. T. Shurley-----	Warrenton
Waycross-----	Hon. J. I. Summerall-----	Waycross
Western-----	Hon. Blanton Fortson-----	Athens

## JUDGES OF THE CITY COURTS.

COURT.	JUDGE.	RESIDENCE.
Albany	Hon. Clayton Jones	Albany
Alma	Hon. Andrew J. Tuten	Alma
Americus	Hon. W. M. Harper	Americus
Ashburn	Hon. R. L. Tipton	Ashburn
Athens	Hon. J. D. Bradwell	Athens
Atlanta	Hon. H. M. Reid	Atlanta
Atlanta	Hon. Andrew E. Calhoun	Atlanta
Bainbridge	Hon. H. B. Spooner	Bainbridge
Barnesville	Hon. J. F. Redding	Barnesville
Baxley	Hon. H. J. Lawrence	Baxley
Blackshear	Hon. R. G. Mitchell, Jr.	Blackshear
Blakely	Hon. A. H. Gray	Blakely
Brunswick	Hon. Eustace C. Butts	Brunswick
Cairo	Hon. L. W. Riggsby	Cairo
Camilla	Hon. Ben. T. Burson	Camilla
Carrollton	Hon. Leon Hood	Carrollton
Cartersville	Hon. Wm. T. Townsend	Cartersville
Claxton	Hon. E. C. Elmore	Claxton
Cleveland	Hon. J. W. H. Underwood	Cleveland
Columbus	Hon. G. Y. Tigner	Columbus
Dawson	Hon. M. C. Edwards	Dawson
Douglas	Hon. T. R. Henson	Douglas
Dublin	Hon. S. W. Sturgis	Dublin
Eastman	Hon. O. J. Franklin	Eastman
Elberton	Hon. Geo. C. Grogan	Elberton
Ellaville	Hon. E. J. Hart	Ellaville
Floyd County	Hon. W. J. Nunnally	Rome
Fort Gaines	Hon. B. M. Turnipseed	Fort Gaines
Gray	Hon. F. Holmes Johnson	Gray
Greensboro	Hon. W. H. Fisher	Greensboro

Greenville	Hon. R. A. McGraw	Greenville
Griffin	Hon. J. J. Flynt	Griffin
Hall County	Hon. W. B. Sloan	Gainesville
Hazlehurst	Hon. J. C. Bennet	Hazlehurst
Hinesville	Hon. W. C. Hodges	Hinesville
Houston County	Hon. A. C. Riley	Fort Valley
Jefferson	Hon. C. S. Bryson	Jefferson
Jesup	Hon. David M. Clark	Jesup
LaGrange	Hon. Duke Davis	La Grange
Leesburg	Hon. W. G. Martin	Leesburg
Lexington	Hon. Joel Cloud	Lexington
Louisville	Hon. M. C. Barwick	Louisville
Ludowici	Hon. Melville Price	Ludowici
Macon	Hon. Will Gunn	Macon
Madison	Hon. E. R. Lambert	Madison
Metter	Hon. W. H. Lanier	Metter
Millen	Hon. G. C. Dekle	Millen
Miller County	Hon. W. I. Geer	Colquitt
Monroe	Hon. J. H. Felker	Monroe
Morgan	Hon. E. L. Smith	Edison
Nashville	Hon. W. R. Smith	Nashville
Newnan	Hon. W. A. Post	Grantville
Oglethorpe	Hon. R. L. Greer	Oglethorpe
Polk County	Hon. John L. Tison	Cedartown
Quitman	Hon. M. Baum	Quitman
Richmond County	Hon. J. C. C. Black, Jr.	Augusta
Sandersville	Hon. W. M. Goodwin	Sandersville
Savannah	Hon. Davis Freeman	Savannah
Savannah	Hon. Jno. Rourke, Jr.	Savannah
Soperton	Hon. W. J. Wallace	Soperton
Sparta	Hon. R. H. Lewis	Sparta
Statesboro	Hon. Remer Proctor	Statesboro

Swainsboro	-----	Hon. Geo. Kirkland, Jr.	-----	Swainsboro
Sylvania	-----	Hon. T. J. Evans	-----	Sylvania
Sylvester	-----	Hon. C. W. Monk	-----	Sylvester
Thomasville	-----	Hon. W. H. Hammond	-----	Thomasville
Thomson	-----	Hon. P. B. Johnson	-----	Thomson
Tifton	-----	Hon. James H. Price	-----	Tifton
Valdosta	-----	Hon. O. M. Smith	-----	Valdosta
Washington	-----	Hon. C. E. Sutton	-----	Washington
Waycross	-----	Hon. J. L. Crawley	-----	Waycross
Waynesboro	-----	Hon. W. H. Davis	-----	Waynesboro
Wrightsville	-----	Hon. B. H. Moye	-----	Wrightsville
Zebulon	-----	Hon. E. F. Dupree	-----	Zebulon

## ACTIVE MEMBERS

Abrahams, E. H., Savannah  
 Adams, A. P., Savannah  
 Adams, J. O., Gainesville  
 Adams, J. S., Dublin  
 Adams, S. B., Savannah  
 Adams, Worley, Royston  
 Adamson, W. C., Carrollton  
 Adderholdt, T. Lumpkin, Gainesville  
 Akerman, Chas., Macon  
 Akin, Paul F., Cartersville  
 Akin, Miss Stella, Savannah  
 Albrecht, Abraham S., 14 Wall St., New York City  
 Alexander, C. E., Savannah  
 Alexander, Irvin, Augusta  
 Alexander, Jos. A., Nashville  
 Alston, Philip H., Atlanta  
 Alston, Robert C., Atlanta  
 Anderson, C. L., Atlanta  
 Anderson, J. Randolph, Savannah  
 Anderson, R. L., Macon  
 Arnold, Lowry, Atlanta  
 Arnold, R. M., Columbus  
 Arnold, R. R., Atlanta  
 Atkinson, David S., Savannah  
 Bacon, R. J., Albany  
 Barrett, George B., Augusta  
 Barrett, W. H., Augusta  
 Barrow, D. C., Savannah  
 Bartlett, C. L., Macon  
 Batchelor, V. A., Atlanta  
 Battle, C. E., Columbus  
 Baughn, C. G., Savannah  
 Bell, Clarence, Atlanta  
 Bell, Geo. L., Jr., Atlanta  
 Bell, H. G., Bainbridge  
 Bell, R. C., Cairo  
 Bellah, J. M., Summerville  
 Bennet, Jno. W., Waycross  
 Bennet, Jos. W., Brunswick  
 Bennet, Sam S., Albany  
 Bennet Stanley S., Quitman  
 Bennet, W. B., Tifton  
 Berner, Robert L., Macon  
 Bernstein, Morris H., Savannah  
 Bidgood, G. C., Dublin  
 Black, J. C. C., Augusta  
 Blackburn, R. B., Atlanta  
 Blackshear, Archibald, Augusta  
 Blackshear, M. H., Dublin  
 Blalock, J. D., Waycross  
 Bleckley, J. M., Cochran  
 Bloch, Chas. J., Macon  
 Bloodworth, J. Fleming, Irwinton  
 Bloodworth, J. M. B., Atlanta  
 Bloodworth, O. H. B., Jr., (Forsyth) 21 Southern Bldg., Washington, D. C.  
 Boatright, F. G., Cordele  
 Bond, Claude, Toccoa  
 Bouhan, Jno. J., Savannah  
 Bovard, Mrs. Clara L., Atlanta  
 Boykin, Buford, Carrollton  
 Boykin, Shirley C., Carrollton  
 Bradley, A. S., Columbus  
 Bradley, A. S., Swainsboro  
 Branch, J. A., Atlanta  
 Branch, L. W., Quitman  
 Brandon, Morris, Atlanta  
 Branham, J., Rome  
 Brannen, J. A., Statesboro  
 Brantley, W. G., Washington, D. C., 1910 Munsey Bldg.  
 Breed, Harry M., La Grange  
 Brewster, P. H., Atlanta  
 Bright, O. E., Savannah  
 Brinson, E. L., Waynesboro  
 Brock, P. F., Macon  
 Brown, Jos. P., Greensboro  
 Brown, Paul, Elberton  
 Brown, W. R., Atlanta  
 Bryan, Shepard, Atlanta  
 Bryan, W. L., Donalsonville  
 Buchanan, W. F., Atlanta  
 Bunn, C. C., Jr., Cedartown  
 Burch, J. E., Dublin  
 Burgess, Willard W., Gray  
 Burney, F. S., Waynesboro  
 Burt, Walter H., Albany  
 Burwell, W. H., Sparta  
 Bussey, A. S., Cordele  
 Bussey, James S., Jr., Augusta  
 Byrd, D. M., Lawrenceville  
 Camp, Lamar, Rome

- Camp, R. Earl, Dublin  
 Candler, Asa W., Atlanta  
 Candler, Jno. S., Atlanta  
 Cann, Geo. T., Savannah  
 Cann, J. Ferris, Savannah  
 Carey, C. N., Rome  
 Cargill, Geo. S., Savannah  
 Carlisle, J. D., Macon  
 Carswell, Geo. H., Irwinton  
 Chalmers, F. S., Atlanta  
 Chambers, Hugh, Macon  
 Chandler, H. H., Winder  
 Chappell, Ira S., Dublin  
 Charters, W. A., Gainesville  
 Chastain, E. S., Atlanta  
 Cheatham, Elliott E., Atlanta  
 Childress, E. F., Atlanta  
 Chipley, Hunt, Atlanta  
 Church, R. E., Atlanta  
 Claxton, Chas. S., Wrightsville  
 Clay, W. L., Savannah  
 Cleveland, Lloyd, Griffin  
 Coates, Howard E., Hawkinsville  
 Cobb, A. J., Athens  
 Cobb, Herschel P., Savannah  
 Cobb, Howell, Athens  
 Cohen, C. H., Augusta  
 Cohen, Edwin A., Savannah  
 Cohen, Girard M., Savannah  
 Cohen, Rodney S., Augusta  
 Colding, R. L., Savannah  
 Colley, Carroll D., Washington  
 Collins, W. S., Edison  
 Colquitt, Walter T., Atlanta  
 Cone, Howell, Statesboro  
 Connor, W. H., Griffin  
 Connerat, Wm. Spencer, Savannah  
 Conyers, C. B., Brunswick  
 Cooley, P., Jefferson  
 Cooper, J. C., Milledgeville  
 Cooper, Jno. R., Macon  
 Copeland, J. B., Valdosta  
 Cornett, W. G., Athens  
 Cotterill, Chas. E., Atlanta  
 Cowart, J. M., Arlington  
 Cozart, A. W., Columbus  
 Crenshaw, John W., Atlanta  
 Crockett, C. C., Dublin  
 Crovatt, A. J., Brunswick  
 Cumming, Bryan, Augusta  
 Cumming, Jos. B., Jr., Augusta  
 Cunningham, T. M., Jr., Savannah  
 Curry, W. Inman, Augusta  
 Custer, W. V., Bainbridge  
 Daly, Augustin, Macon  
 Daley, R. M., Dublin  
 Daley, Walter R., Atlanta  
 Dart, F. Willis, Douglas  
 Dasher, B. J., Macon  
 Davidson, W. T., Eatonton  
 Davie, Carl N., Gainesville  
 Davis, Ernest M., Camilla  
 Davis, Jas. R., Thomaston  
 Davis, Jno. Camp, Rome  
 Davis, L. L., Cordele  
 Davis, Troy C., Macon  
 Dean, Linton A., Rome  
 Deaver, B. S., Macon  
 Deen, D. T., Waycross  
 Defore, Walter, Macon  
 Dekle, Lebbeus, Thomasville  
 Denmark, E. P. S., Valdosta  
 Denmark, R. L., Savannah  
 Dent, H. W., Atlanta  
 Denton, Homer G., Atlanta  
 Dillon, Miss Hortense M., Savannah  
 Dillon, Walter S., Atlanta  
 Dismukes, R. E., Columbus  
 Dobbs, E. O., Barnesville  
 Dodd, Eugene, Atlanta  
 Dodson, W. A., Americus  
 Donalson, Erle M., Bainbridge  
 Donnelly, Charles E., Savannah  
 Dorris, W. H., Cordele  
 Dorsey, Cam D., Atlanta  
 Dorsey, Roy, Atlanta  
 Douglas, Hamilton, Atlanta  
 Douglas, W. W., Savannah  
 Doyal, Paul H., Rome  
 Drawdy, S. L., Homerville  
 Drennan, Roy S., Atlanta  
 Drewry, J. A., Griffin  
 Duke, Jos. B., Eatonton  
 Dukes, H. G., Savannah  
 Dukes, J. Perry, Pembroke  
 Dykes, W. W., Americus  
 Edwards, Chas. G., Savannah  
 Edwards, Clark, Jr., Elberton  
 Ellis, Geo. R., Americus  
 Ellis, J. Lewis, Americus  
 Ellis, Pearson, Cordele  
 Ellis, Robert C., Tifton  
 Ellis, Roland, Macon  
 Erwin, Howell C., Athens  
 Evans, A. W., Sandersville  
 Evans, T. W., Dublin  
 Ezell, W. Robert, Atlanta  
 Falligant, Raiford, Savannah  
 Farkas, Leonard Albany  
 Farr, Wm. M., Savannah

Fawcett, J. R., Savannah  
 Featherston, C. N., Rome  
 Felder, Thos. S., Macon  
 Felton, Wm. H., Macon  
 Ferrell, R. H., Albany  
 Fleming, W. H., Augusta  
 Fleming, T. F., Sparta  
 Fogarty, D. G., Augusta  
 Fort, T. Hicks, Columbus  
 Fortson, B. W., Arlington  
 Fortson, Lovick G., Atlanta  
 Foster, Albert G., Madison  
 Foster, John J., Augusta  
 Fowler, B. J., Macon  
 Foy, R. S., Sylvester  
 Franklin, A. L., Augusta  
 Franklin, O. J., Eastman  
 Freeman, R. Hill, Atlanta  
 Fuller, W. A., Atlanta  
 Fullbright, H. J., Atlanta  
 Fullwood, C. W., Tifton  
 Fusillo, Paul, Savannah  
 Gamble, Jno. B., Athens  
 Ganahl, Jos., Augusta  
 Gardner, B. C., Camilla  
 Gardner, J. D., Camilla  
 Garrard, F. U., Columbus  
 Garrett, Chas. H., Macon  
 Garrett, Q. L., Waycross  
 Gazan, Jacob, Savannah  
 Gazan, Simon N., Savannah  
 Gerrald, Walter N., Boston  
 Gibbs, St. Clair, Atlanta  
 Gibbs, W. B., Jesup  
 Gignilliatt, Wm. R., Savannah  
 Gilliam, Reuben F., Atlanta  
 Glawson, C. A., Macon  
 Glessner, C. L., Blakely  
 Goddard, F. F., Lyons  
 Goetchius, H. R., Columbus  
 Goldstein, M. F., Atlanta  
 Golucke, A. G., Crawfordville  
 Gordon, W. W., Jr., Savannah  
 Gower, O. T., Vienna  
 Grace, Walter J., Macon  
 Graham, E. D., McRae  
 Graham, Jno. M., Atlanta  
 Grantham, Jesse, Fitzgerald  
 Green, J. Howell, Atlanta  
 Green, Thos. F., Athens  
 Grice, Warren, Macon  
 Grogan, Geo. C., Elberton  
 Grove, A. S., Atlanta  
 Guerard, John M., Savannah  
 Guerry, John B., Montezuma  
 Gunn, Will, Macon

Guyton, Clarence T., Guyton  
 Haley, John S., Elberton  
 Hall, C. H., Macon  
 Hall, H. A., Newnan  
 Hammond, T. A., Atlanta  
 Hancock, J. M., Macon  
 Hancock, Oliver C., Macon  
 Hardeman, Frank, Louisville  
 Hardeman, R. N., Jr., Louisville  
 Hardin, Miss Alene, Macon  
 Hargrett, Haines, Tifton  
 Harper, Jas. E., Augusta  
 Harrell, Sam T., Quitman  
 Harris, Geo. H., McRae  
 Harris, Geo. A. H., Jr., Rome  
 Harris, Grady C., Macon  
 Harris, Jas. W., Cuthbert  
 Harris, Jesse, Macon  
 Harris, Jno. B., Macon  
 Harris, Roy V., Louisville  
 Harris, Walter A., Macon  
 Hartsheld, R. G., Bainbridge  
 Hartridge, W. C., Savannah  
 Hawes, T. S., Bainbridge  
 Heath, E. V., Waynesboro  
 Heery, B. B., Savannah  
 Henley, Jno. W., Atlanta  
 Henson, A. L., Calhoun  
 Henson, W. C., Cartersville  
 Herzog, Alva L., Savannah  
 Hewlett, W. R., Savannah  
 Heyman, Arthur, Atlanta  
 Heyward, A. H., Macon  
 Heyward, Geo. C., Jr., Savannah  
 Higdon T. B., Atlanta  
 Highsmith, Jno. S., Atlanta  
 Hill, B. H., West Point  
 Hillyer, Geo., Atlanta  
 Hilton, C. L., Sylvania  
 Hirsch, Harold, Atlanta  
 Hitch, R. M., Savannah  
 Hodges, H. A., Rochelle  
 Hofmayer, I. J., Albany  
 Holliday, P. O., Macon  
 Hollingsworth, J. C., Sylvania  
 Hollis, Howell, Columbus  
 Holton, R. O., Rochelle  
 Hopkins, L. C., Atlanta  
 Houser, Emmett, Ft. Valley  
 Howard, Henry G., Augusta  
 Howard, J. H., Sylvania  
 Howard, Wm. M., Augusta  
 Howard Wm. Schley, Atlanta  
 Howell, Albert, Jr., Atlanta  
 Hubbard, Eli B., Gordon  
 Hull, James M., Jr., Augusta

- Humphries, Jos. W., Atlanta  
 Hunter, E. Ormonde, Savannah  
 Hunter, Francis B., Statesboro  
 Hutchins, N. L., Lawrenceville  
 Hynds, Jno. A., Atlanta  
 Irvin, I. T., Jr., Washington  
 Irvin, W. D., Augusta  
 Isaac, Clarence R., Brunswick  
 Isaac, Max, Brunswick  
 Jackson, B. P., Vidalia  
 Jackson, Geo. T., Augusta  
 Jackson, M. M., Atlanta  
 Jennings, W. R., Athens  
 Johns, G. A., Winder  
 Johnson, Greene F., Monticello  
 Johnson, Henry Wiley, Savannah  
 Johnson, Paul E., Atlanta  
 Johnson, W. T., Macon  
 Johnston, E. P., Macon  
 Joiner, Eldon L., Thomasville  
 Jones, C. Baxter, Macon  
 Jones, Bruce C., Macon  
 Jones, George S., Macon  
 Jones, Harrison, Atlanta  
 Jones, J. B., Rome  
 Jones, J. Littleton, Newnan  
 Jones, R. H., Jr., Atlanta  
 Jones, R. O., Newnan  
 Jones, R. R., Dawson  
 Jones, S. J., Albany  
 Jones, Winfield P., Atlanta  
 Jordan, Arthur W., Swainsboro  
 Jordan, H. Mercer, Savannah  
 Jordan, R. C., Macon  
 Kelley, G. F., Lawrenceville  
 Kelly, J. F., Rome  
 Kea, Fred, Dublin  
 Kennedy, John C., Savannah  
 Kenan, Livingston, Savannah  
 Kieve, J. W., Albany  
 Kimball, Rollin H., Winder  
 King, Chas. C., Covington  
 King, W. C., Ashburn  
 Kirkland, J. D., Metter  
 Kline, Alfred R., Moultrie  
 Kontz, E. C., Atlanta  
 Kunz, Mark, Perry  
 Lane, McKibben, Macon  
 Langley, Lee J., Rome  
 Lanier, Fred T., Statesboro  
 Lankford, G. W., Lyons  
 Latimer, W. Carroll, Atlanta  
 Lawrence, A. A., Savannah  
 Lawson, Hal, Abbeville  
 Lawson, H. F., Hawkinsville  
 Lawton, A. R., Savannah  
 Lawton, A. R., Jr., Savannah  
 Le Craw, J. W., Atlanta  
 Lee, Lansing B., Augusta  
 Lester, Richard M., Savannah  
 Lewis, Miles W., Greensboro  
 Lewis, T. J., Atlanta  
 Lilly, O. J., Gainesville  
 Lippett, S. B., Albany  
 Little, Jno. D., Atlanta  
 Little, W. C., Brunswick  
 Loftin, Frank S., Franklin  
 Logan, J. B. G., Homer  
 Love, W. G., Columbus  
 Lovett, A. B., Savannah  
 Lovejoy, Hatton, La Grange  
 Lovvorn, Boyd A., La Grange  
 Lunsford, J. R., Hamilton  
 Lyle, Edward, Atlanta  
 MacDonnell, Alex. R., Savannah  
 Mackall, W. W., Savannah  
 MacIntyre, W. I., Thomasville  
 Maddox, G. E., Rome  
 Maddox, James, Rome  
 Mann, Wm. A., Macon  
 Mann, W. S., McRae  
 Marshall, T. O., Americus  
 Martin, T. Baldwin, Macon  
 Martin, W. G., Leesburg  
 Mason, W. A., Hawkinsville  
 Mason, James Walter, Atlanta  
 Matthews, Aubrey, Rome  
 Matthews, J. E. F., Thomaston  
 Mayer, B. J., West Point  
 McAlpin, Henry, Savannah  
 McCalla, J. H., Conyers  
 McCowen, B. B., Augusta  
 McCreary, Jno. J., Macon  
 McDaniel, H. D., Monroe  
 McDaniel, Sanders, Atlanta  
 McDuffie, P. C., Atlanta  
 McIntosh, John H., Elberton  
 McIntyre, F. P., Savannah  
 McLaws, U. H., Savannah  
 McWhorter, H., Athens  
 McWhorter, Hamilton, Jr.,  
     Lexington  
 Meader, R. D., Brunswick  
 Meadors, L. L., La Grange  
 Meadow, W. K., Athens  
 Mell, T. S., Athens  
 Merrill, J. Hansell, Thomasville  
 Merritt, R. L., Sparta  
 Merritt, Walter, Madison  
 Meyer, A. A., Atlanta  
 Meyer, Edward L., Atlanta  
 Michael, Max, Athens

Middlebrooks, Grover, Atlanta  
 Miller, A. L., Macon  
 Miller, B. S., Columbus  
 Miller, C. Don, Atlanta  
 Miller, Wallace, Macon  
 Mills, Lewis A., Jr. Savannah  
 Mills, W. F., Hinesville  
 Milner, J. H., Eastman  
 Milner, Thos. H., Albany  
 Minis, A., Savannah  
 Mitchell, E. M., Atlanta  
 Mitchell, O. B., Atlanta  
 Moise, E. W., Atlanta  
 Moon, E. T., La Grange  
 Moore Louis S. Thomasville  
 Moore, R. Lee, Statesboro  
 Moore, Roy W., Macon  
 Mooty, M. U., La Grange  
 Morris, John E., Jr., Quitman  
 Morris, Sylvanus, Athens  
 Morrisy, Leo A., Savannah  
 Mulherin, Jas. B., Augusta  
 Mundy, Wm. W., Cedartown  
 Murdaugh, Lamar L., McRae  
 Myrick, Shelby, Savannah  
 Nall, W. A., Elberton  
 Nalley, H. W., Alamo  
 Napier, George M., Atlanta  
 Neely, Edgar A., Atlanta  
 Neill, W. Cecil, Columbus  
 New, S. P., Dublin  
 Nisbet, W. R., Macon  
 Nix, H. A., Athens  
 Nix, O. A., Lawrenceville  
 Norman, Erle, Washington  
 Norman, R. C., Washington  
 Norman, Newton J., Savannah  
 Norris, Jno. T., Cartersville  
 Nottingham, George M., Macon  
 Noyes, J. A., Atlanta  
 O'Byrne, M. A., Savannah  
 Odom, Benton, Newton  
 O'Donnell, George, Savannah  
 Oliver, Edgar J., Savannah  
 Oliver, F. M., Savannah  
 O'Neal, Alan S., Savannah  
 O'Neal, Marvin, Savannah  
 O'Neal, M. E., Bainbridge  
 Orme, A. J., Atlanta  
 Orr, Gustavus, J., Jr., Savannah  
 Overstreet, E. K., Jr., Sylvania  
 Owens, George W., Savannah  
 Palmer, Geo. C., Columbus  
 Palmer, H. E. W., Atlanta  
 Park, Noel P., Greensboro  
 Park, Orville A., Macon

Parker, D. M., Waycross  
 Parker, Robert S., Atlanta  
 Parks, Benj. C., Waycross  
 Parks, Warren B., Dawson  
 Parry, Harvey L., Atlanta  
 Patty, H. M., Atlanta  
 Payne, H. B., Elberton  
 Payton, Claude, Albany  
 Peacock, H. A., Albany  
 Peeples, H. C., Atlanta  
 Perry, Jas. A., Lawrenceville  
 Persons, A. P., Talbotton  
 Persons, G. Ogden, Forsyth  
 Perryman, A. J. Jr., Talbotton  
 Phillips, B. Z., Atlanta  
 Phillips, J. R., Louisville  
 Plunkett, R. G., Macon  
 Pierce, Benj. E., Augusta  
 Pope, D. H., Brunswick  
 Pope, Jeff A., Cairo  
 Pope, Jno. D., Albany  
 Popper, Jos. W., Macon  
 Porter, J. H., Atlanta  
 Pottle, Jos. E., Milledgeville  
 Pottle J. R., Albany  
 Powell, A. G., Atlanta  
 Powell, J. Spencer, Sylvania  
 Powers, E. Clem, Macon  
 Powers, V. L., Macon  
 Pratt, J. C., Winder  
 Price, I. L., Swainsboro  
 Price, R. G., Louisville  
 Purvis, Arthur L., Savannah  
 Quarterman, W. H., Winder  
 Quincey, J. W., Douglas  
 Randolph, H. N., Atlanta  
 Raoul, Miss Eleonore Atlanta  
 Ravenel, T. P., Savannah  
 Rawls, H. G., Donalsonville  
 Redfearn, D. H., Albany  
 Reed, Harry D., Waycross  
 Reese, Millard, Brunswick  
 Reynolds, Jos. S., Atlanta  
 Rich, P. D., Colquitt  
 Richards, R. R., Savannah  
 Richards, Rufus G., Savannah  
 Richter, George H., Savannah  
 Riddell, H. E., Atlanta  
 Ridgdill, John S., Tifton  
 Rivers, E. D., Milltown  
 Roberts, Orrin, Monroe  
 Rogers, Jas. M., Savannah  
 Rogers, Z. B., Elberton  
 Ross, G. D., Winder  
 Rosser, Jas. E., La Fayette  
 Rosser, L. Z., Atlanta

- Rosser, L. Z., Jr., Atlanta  
 Rowe A. B. Savannah  
 Rowe P. H., Augusta  
 Rowell W. S. Rome  
 Rucker Lamar, Athens  
 Russell, Chas. D., Savannah  
 Russell, H. D., Macon  
 Russell, Horace, Atlanta  
 Russell, Lewis C., Winder  
 Russell, R. B., Winder  
 Russell, R. B., Jr., Winder  
 Ryals, T. E., Macon  
 Ryan, John Z., Savannah  
 Sanders, Walter C., Room 1733  
     Grand Central Terminal,  
     New York City  
 Sanderson, Wm. R., Savannah  
 Sandwich, M. H., Thomaston  
 Sandford, D. S., Milledgeville  
 Saussy, F. T., Savannah  
 Saussy, Gordon, Savannah  
 Scarlett, F. M., Jr., Brunswick  
 Schwarz, John E., Savannah  
 Seabrook, Paul E., Savannah  
 Shanks, Thomas H., Columbus  
 Shannon, Jas. D., Jeffersonville  
 Sharpe, T. Ross, Lyons  
 Shattuck, Norman, La Fayette  
 Shaw, Walter B., La Fayette  
 Shelton, Chas. B., Atlanta  
 Shumate, F. E., Atlanta  
 Sibley, Erwin, Milledgeville  
 Sibley, John A., Atlanta  
 Silverman, M. H., Atlanta  
 Sims, Walter A., Atlanta  
 Slade, L. C., Columbus  
 Slaton, John M., Atlanta  
 Slaton, W. A., Washington  
 Slaton, Wm. F., Jr., Atlanta  
 Smith, Alex W., Atlanta  
 Smith, Alex W., Jr., Atlanta  
 Smith, D. D., Eastman  
 Smith, Hoke, Southern Bldg.,  
     Washington, D. C.  
 Smith, John A., Talbotton  
 Smith, J. R. L., Macon  
 Smith, Jno. Y., Atlanta  
 Smith, Marion, Atlanta  
 Smith, R. L. J., Commerce  
 Smith, Victor L., Atlanta  
 Smith, Wm. E., Albany  
 Snow, Russell, Quitman  
 Spalding, Hughes, Atlanta  
 Sparks, A. O. B., Macon  
 Spence, A. B., Waycross  
 Stanfield, D. L., Reidsville  
 Steed, W. E., Butler  
 Stephens, Wm. B., Savannah  
 Stevens, Geo. W., Atlanta  
 Stinson, J. N., Waycross  
 Stockbridge, Basil, Atlanta  
 Stone, Lowery, Blakely  
 Stovall, W. B., Atlanta  
 Strickland, J. J., Athens  
 Strickland, Roy M., Peoples Nat'l  
     Bank Bldg., Lynchburg, Va.  
 Strozier, Harry S., Macon  
 Sumner, W. R., Sylvester  
 Sutton, C. E., Washington  
 Swift, H. H., Columbus  
 Taylor, Eugene Stoddard, Sum-  
     merville  
 Taylor, Jno. D., Summerville  
 Theus, Charlton M., Savannah  
 Thomasson, J. T., LaGrange  
 Thomas, Jno. M., Savannah  
 Thompson, A. H., LaGrange  
 Thomson, W. D., Atlanta  
 Titus, Theo., Thomasville  
 Tipton, J. H., Sylvester  
 Townsend, Wm. T., Cartersville  
 Travis, John L., Savannah  
 Travis, Robert J., Savannah  
 Trawick, Wm. H., Cedartown  
 Troutman, H. B., Atlanta  
 Troutman, Robt. B., Atlanta  
 Turner, S. M., Quitman  
 Turner, William D., Savannah  
 Turnipseed, B. M., Ft. Gaines  
 Turpin, W. C., Jr., Macon  
 Twitty, F. E., Brunswick  
 Tye, Jno. L., Atlanta  
 Tyson, Chas. M., Darien  
 Tyson, Wm. S., Darien  
 Underwood, L. C., Mt. Vernon  
 Ulmer, Anderson, Savannah  
 Upson, F. L., Athens  
 Upson, S. C., Athens  
 Vinson, Carl, Milledgeville  
 Vocelle, Jas. T., St. Mary's  
 Wall, J. B., Fitzgerald  
 Walsh, Thos. F., Jr., Savannah  
 Watkins, Edgar, Atlanta  
 Watkins, G. M., Atlanta  
 Way, A. S., Reidsville  
 Weathers, Edward G., Millen  
 Webb, G. C., Americus  
 Webster, J. P., Atlanta  
 Wells, Jas. T., Jr., Savannah  
 West, John T., Thomson  
 Westbrook, Cruger, Albany  
 Westmoreland, Geo., Atlanta

Westmoreland, John L., Atlanta	Wood, Geo. W., Jr., Macon
Wheeler, A. C., Gainesville	Wood, Jesse M., Atlanta
Whipple, U. V., Cordele	Wooten, W. A., Eastman
Whitaker, Jas. R., Cartersville	Worrill, Claude, Thomaston
White, Herschel, Sylvania	Wright, Anton P., Savannah
Wilcox, E. K., Valdosta	Wright, Barry, Rome
Wilkinson, H. A., Dawson	Wright, Boykin, Augusta
Williams, J. J., Lyons	Wright, Graham, Rome
Willingham, Wright, Rome	Wright, Howard P., Savannah
Wilson, H. E., Savannah	Yeomans, M. J., Dawson
Wilson, L. A., Waycross	Youngblood, F. R., Savannah
Wimberley, C. W., Jr., Bainbridge	Zahner, Robert, Atlanta
Witman, M. J., Macon	Zellars, B. B., Hartwell



# INDEX

	PAGE
Adams, A. Pratt, Remarks by .....	75
Adams, S. B., Remarks by .....	36
Addresses:	
Arnold, Reuben R. ....	319
Candler, C. Murphey .....	139
Lawton, A. R., President's .....	81
Amendment to By-Laws .....	38, 39
American Bar Association:	
Delegates Appointed .....	35
Members in Georgia .....	455
Officers for 1921-1922 .....	454
Appellate Court Practice, Report of Committee on .....	13
Arkansas Bar Association, Telegram from .....	35
Arnold, Reuben R.:	
Address by .....	319
Remarks by .....	29
Arnold, Robert M.:	
Paper by .....	358
Remarks by .....	41
Atkinson, Spencer R., Memorial of .....	395
Bar Associations, Delegates to Conference of .....	12
Bartlett, C. L., Remarks by .....	18, 65
Bench, The, as a School of Law, Paper by A. B. Lovett .....	350
Branham, Joel, Extract from Paper of .....	33
By-Laws .....	440
Candler, C. Murphey:	
Address by .....	139
Remarks by .....	36
Committees for 1921-1922 .....	450
Conference of Bar Association Delegates, Paper by	
T. A. Hammond .....	380
Constitution .....	437
Cozart, A. W.:	
Remarks by .....	11, 14, 20, 21, 31, 33, 38, 44, 48, 50, 51, 62
64, 65, 68, 70, 75.	

	PAGE
Cozart, A. W. (Continued):	
Report of Committee on Memorials by .....	16
Curd, Richard, Memorial of .....	407
Delegates:	
American Bar Association .....	35
Conference of Bar Association Delegates .....	12
Election of Officers .....	30
Elliott, E. S., Memorial of .....	401
Executive Committee, Report of ____9, 11, 18, 19, 27, 28, 31, 32, 37, 38, 39, 40.	37
Federal Courts:	
Report and Discussion on .....	57
Resolution .....	39
Federal Legislation, Report on .....	56, 434
Fogarty, D. G., Remarks by .....	38, 39, 48, 74, 75
Franklin, A. L., Remarks by .....	45
Frontiersman, The, in the Field of Early Legislation, Paper by A. L. Henson .....	297
Georgia Historical Society, Reports of Association to .....	54
Georgia, History in Eighteenth Century, Paper by Orville A. Park .....	154
Gordon, W. W., Remarks by .....	54, 69, 70, 74, 75
Grievance Committee:	
Report .....	429
Resolution Regarding .....	38
Guerry, DuPont, Memorial of .....	405
Hammond, T. A.:	
Paper by .....	380
Remarks by .....	55
Hardeman, Robt. L., Remarks by .....	75
Henson, A. L.:	
Paper by .....	297
Remarks by .....	16
Resolution by .....	22
History of Georgia in the Eighteenth Century, Paper by Orville A. Park .....	154

# INDEX

473

	PAGE
Interstate Law, Report of Committee on .....	415
Judicial Controversies on Federal Appellate Jurisdiction, Address of President A. R. Lawton .....	81
Jurisprudence, Law Reform and Procedure, Report on .....	412
King, Alex. C., Remarks by .....	40, 41
Latimer, W. Carroll:	
Remarks by .....	13
Report of Executive Committee by .....9, 11, 18, 19, 27, 31, 32, 37, 38, 39, 40.	28
Lawson, H. F., Remarks by .....	16
Lawton, A. R., President's Address by .....	81
Lec, Lansing B.:	
Remarks by .....	53
Report of Committee on Federal Legislation by .....	56
Legal Education, Report on .....	427
Legal Ethics, Report on .....	429
Legislative Committee:	
Appointment .....	35
Report .....	411
Local Bar Associations .....	457
Louisiana Bar Association, Telegram from .....	40
Lovett A. B., Paper by .....	350
Manton, Martin T., Remarks by .....	23
Members:	
Active .....	463
Honorary .....	458
New .....10, 19, 27, 32,	38
Memorials, Report on .....	16, 392
Merrill, J H., Telegram to .....	13.
New Members .....	10, 19, 27, 32
Nominating Committee:	
Appointment .....	15
Report .....	30
Resolution Regarding .....	39
Norton, L B., Memorial of .....	402

	PAGE
<b>Officers:</b>	
American Bar Association, 1921-1922 .....	454
Election .....	30
Georgia Bar Association, 1921-1922 .....	450
Oliver, F. M., Remarks by .....	54, 66, 68, 69
Owens, Geo. W., Remarks by .....	74
 <b>Papers Read:</b>	
Arnold, Robert M. ....	358
Hammond, T. A. ....	380
Henson, A. L. ....	297
Lovett, A. B. ....	350
Park, Orville A. ....	154
Pierce, Benj. E. ....	305
<b>Park, Orville A.:</b>	
Paper by .....	154
Remarks by .....	37, 70
<b>Permanent Commission on Procedure, Report</b> .....	432
<b>Phillips, J. R., Remarks by</b> .....	70
<b>Pierce, Benj. E., Paper by</b> .....	305
<b>Powell, A. G.:</b>	
Remarks by .....	20, 21, 56, 76
Report of Committee on Appellate Court Practice by .....	13
Resolution by .....	29
<b>Public Utility Regulation in Georgia, Address by</b>	
C. Murphy Candler .....	139
 <b>Reese, Millard, Remarks by</b> .....	13
<b>Report of Treasurer</b> .....	408
<b>Reports of Association:</b>	
Georgia Historical Society .....	54
Information by Secretary .....	53
<b>Reports of Committees:</b>	
Appellate Court Practice .....	13
Executive .....9, 11, 18, 19, 27, 28, 31, 32, 37, 38, 39,	40
Federal Legislation .....	56, 434
Interstate Law .....	415
Jurisprudence, Law Reform and Procedure .....	412
Legal Education and Admission to the Bar .....	427
Legal Ethics and Grievances .....	429
Legislation .....	411
Memorials .....	16, 392
Nominations .....	30
Permanent Commission on Procedure .....	432

	PAGE
<b>Resolutions:</b>	
Federal Courts .....	39
Grievance Committee .....	38
Hotel Tybee .....	40
Nominating Committee .....	38, 39
Referred to Executive Committee .....	16
Saint John's Church Choir .....	40
Stephens, Alex. H., Memorial .....	22
Taft, Wm. H. ....	29, 31
Thanks to Savannah Bar .....	39
Saint John's Church Choir, Resolution of Thanks to .....	40
Savannah Bar, Resolution of Thanks to .....	39
Slaton, John M., Remarks by .....	59, 61, 62, 63, 65, 68, 69
Stephens, Alex. H., Resolution Regarding Memorial to .....	22
Sunday Legislation, Paper by Reuben M. Arnold .....	358
Sweat, J. L., Memorial of .....	393
Swift, H. H., Remarks by .....	52, 64, 70
<b>Taft, Wm. H.:</b>	
Resolution Regarding .....	29, 31
Letter from .....	31
Taxation, Paper by Benj. E. Pierce .....	305
<b>Telegram from:</b>	
Arkansas Bar Association .....	35
Louisiana Bar Association .....	40
Tendencies of the Times, Address by Reuben R. Arnold .....	319
Travis, R J., Remarks by .....	62, 70, 74
Treasurer's Report .....	408
Uniform State Laws, Appropriation to Commission on .....	55
Yeomans, M. J., Remarks by .....	54, 70















Stanford Law Library



3 6105 063 472 117



